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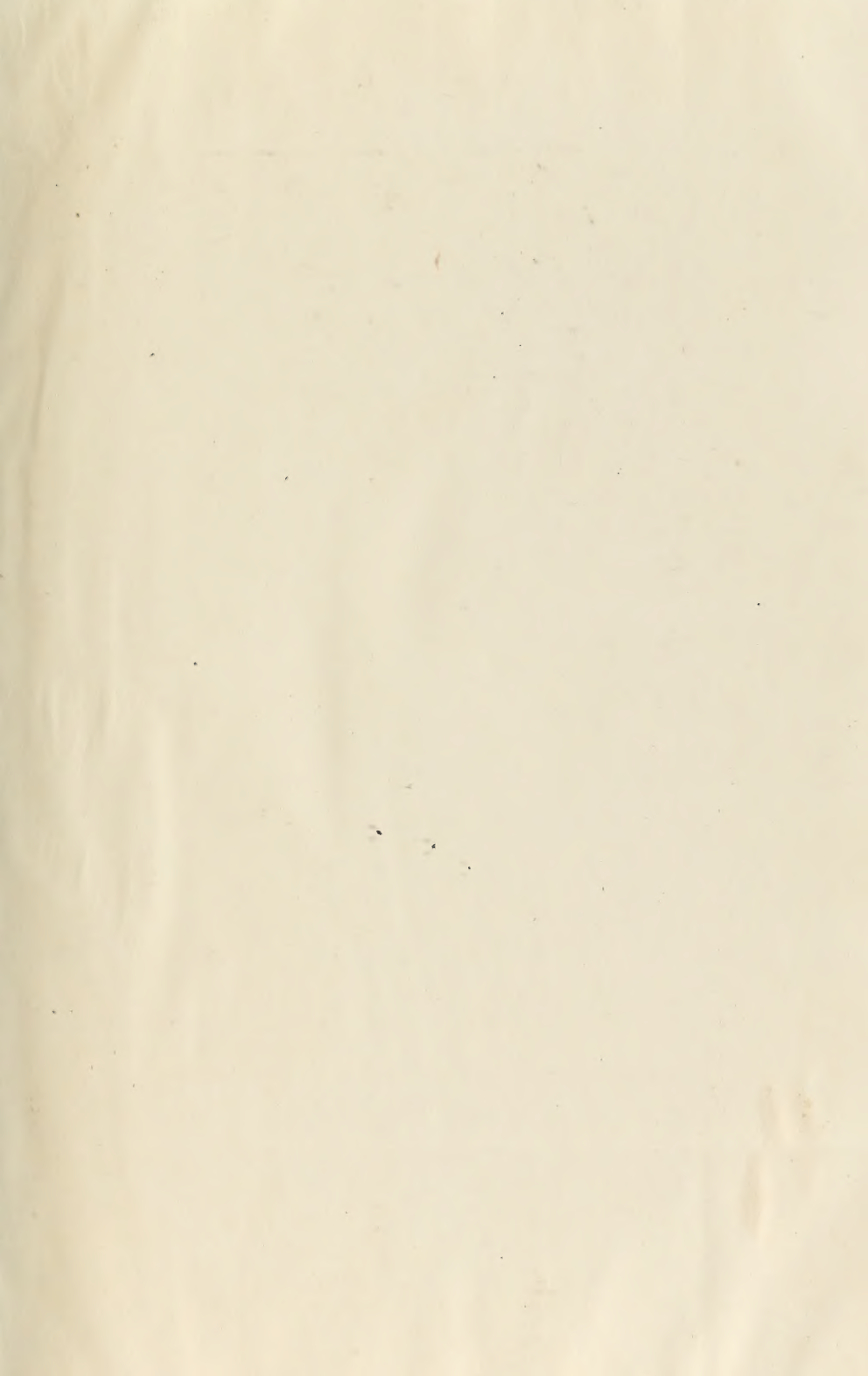
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United States
1108
Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

(IN SIX VOLUMES)

THE KOKE COMPANY OF AMERICA, THE SOUTHERN
KOKE COMPANY, LIMITED, THE KOKE COMPANY OF
TEXAS, THE KOKE COMPANY OF OKLAHOMA, and
THE KOKE COMPANY OF ARKANSAS,

Appellants,

vs.

THE COCA-COLA COMPANY, a Corporation,

Appellee.

VOLUME II.
(Pages 385 to 800, Inclusive.)

Upon Appeal from the United States District Court for the
District of Arizona.

Filed

SEP 13 1917

F. D. Monckton,

Clerk.

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District of Arizona.

(Deposition of Asa G. Candler.)

Redirect Examination by Mr. HIRSCH.

Mr. Mayfield stored all his stuff in my warehouse—that's what he told me—he was going out of that place and stored the things there. They consisted of "Wine of Coca," bottles for "Wine of Coca," [375] and labels, hair dye bottles and labels connected with the manufacture, a whole lot of cough syrup and things connected with that, and "Compound Syrup of Stillinga"—it was an alternative preparation—and I think that's all. Yes, sir; they were all medicines. It's my impression that Mr. Mayfield left Atlanta at that time. He went to Mr. W. E. Hayne, who was then in business in this city and tried to sell him "Yum Yum"—said it was made by the "Coca-Cola" formula; well, he said he didn't want any "Yum Yum," and required him to sell him "Coca-Cola" and bill it as such. I got the bill and got after Mr. Mayfield about it—that and another one—he told me he had a barrel of "Coca-Cola" that he had gotten in exchange for something and he was selling it out, but he would quit it. The other one was Dr. Theodore Schumann. He told me he didn't manufacture it.

Recross-examination by Mr. LITTLETON.

Yes, that statement about Mayfield selling to Hayne and Schumann is just their statement to me.

(Objected to by defendants because hearsay. Objection overruled. Exception.)

I saw the bills; I haven't got them now. (Same objection. Overruled. Exception.)

(Plaintiff here tendered and offered in evidence Plaintiff's Exhibits #67, #73, #74, #75, #76, and #77.)

Deposition of John Slaughter Candler, for Plaintiff.**JOHN SLAUGHTER CANDLER.**

Direct Examination by Mr. HIRSCH.

I am a lawyer and a member of the firm of Candler, Thomson & Hirsch. I was admitted to the Bar in 1882 and practiced law until 1886, when I was made prosecuting attorney of the Stone Mountain Circuit in this State. In 1896 I was made Judge of the Circuit Court here, which position I held until I was elected an Associate Justice in the Supreme Court of this State in 1902. I resigned as associate justice in 1906 and have been practicing law since then.

[376]

Yes, sir; I know F. M. Robinson, Ed. Holland and Dr. J. S. Pemberton, very well. The first time I ever saw Mr. Robinson he was introduced to me by Ed. Holland. He wanted to consult me about a matter in connection with "Coca-Cola"—that's the first time I ever heard of "Coca-Cola." He came to see me with reference to some fuss which they had had with Dr. Pemberton in connection with his having disposed of "Coca-Cola" to some one else,—to some other parties. I went down to the place to see Dr. Pemberton. My recollection is that at that time he was doing business in the house that had been the home of old man Holland and belonged to Ed. Holland's wife, on Marietta Street. I went down there and was told there that he was sick at home and I went out to see him with reference to the complaint that Mr. Robinson and Mr. Holland made to me, at his home. That complaint was that he had trans-

(Deposition of John Slaughter Candler.)

ferred to a company with which they were connected "Coca-Cola" and their complaint was against him that he now claimed he had transferred it to some one else and that he had never given it to that company and they wanted to employ me with reference to that matter. I accepted their employment to the extent of going to see him—I was a young lawyer, they didn't have anything and I didn't, very much, and I went to see Dr. Pemberton with reference to seeing whether they had any case or not. When I went down to see him he was then living in an old cottage on what is now DeKalb Avenue but what was then Decatur Street, just this side of Mooreland Avenue, almost opposite a little church down there—it was a small cheap house, a cottage, and he and his wife were living there, and I found him lying on his bed, but his coat off. I remember very well, his wife met me and I went to see him and told him what they had said. Dr. Pemberton was a very quiet sort of man and I told him what they had stated and he said, "Well, they are mistaken," he says, "I never did put this into that business, they have got no interest in it whatever, and I have done what they say, but I never did give them any rights in it, nor their company never had any rights in it, and I had a right to do it and I did." [377] He then remarked, "It don't make much difference, though, even if they did have any rights. I don't know how you would get anything out of me"—that's the way he put it, "I don't know how you would get anything out of me." I possibly might complete that—that was about the

(Deposition of John Slaughter Candler.)

sum and substance of that interview, as I recall it, exactly. Finally Mr. Robinson came to see me to know the result and I told him what Dr. Pemberton said and then I laughingly told him I didn't see much chance—I didn't care for his case on any contingent fee on that sort of statement and that was the end of it.

(There was no cross-examination of this witness.)

Deposition of Willis Erwin Venable, for Plaintiff.

WILLIS ERWIN VENABLE.

Direct Examination by Mr. HIRSCH.

I am 72 years old, reside at West End, Gordon Street, Atlanta, and I came here in January, 1867. I have been living here, with the exception of thirteen years, all the time since then. Yes, sir, I was in Atlanta in 1887. Yes, sir, I recognize the signatures on Plaintiff's Exhibit #78 and one of them is mine. The others are Dr. J. S. Pemberton and George S. Lowndes. Yes, sir, I certainly do recognize all those signatures. I don't remember the date exactly when those signatures were signed, but I remember signing it. Yes, sir, that's my signature right there and that's Dr. Pemberton's and that's Mr. Lowndes. Well, there was some kettles and—I don't remember just what there was—but there was a lot of stuff that was used in the manufacturing of "Coca-Cola" that was turned over to us with this paper. Yes, sir, I recognize the paper marked Plaintiff's Exhibit #79—that's a paper that was turned over to us when we bought these things according to this paper, yes.

(Deposition of Willis Erwin Venable.)

sir. Yes, sir; the paper marked Plaintiff's Exhibit #80 bears my signature and that of Mr. Lowndes. I don't remember who wrote the letter marked Plaintiff's Exhibit #81 and which is dated April 11, 1887, but I read the letter and signed it, that's my signature. That's not my handwriting but that's my signature there. [378] Yes, that's my signature and Lowndes on the paper marked Plaintiff's Exhibit #82. I don't remember when we sold this to Woolfolk—that's my signature and that's Mr. Lowndes' and that's Woolfolk Walker's. Yes, sir; these documents were delivered about the dates that are on them. Yes, sir; I knew Dr. J. S. Pemberton intimately. Yes, sir; he was the first one that ever brought the "Coca-Cola" to me or that I ever heard of it.

"Q. 25. Could you remember the name 'Coca-Cola' when he first came to you or did you have to write it down?"

"A. I couldn't remember it and I had to write it down; he left a bottle with me and I had to write it down—the name of it."

"Q. 26. Mr. Venable, immediately after the signing of this paper which we denominate as Exhibit #78 and which is signed by Venable, Pemberton and Lowndes, and immediately after you obtained this bill of sale, which we denominate as Exhibit #79, did you take over this property and commence the manufacture of 'Coca-Cola'?"

"A. Yes, sir."

"Q. 27. Now, when you sold out—you and Mr. Lowndes sold out to Walker and Mr. Dozier,—you

(Deposition of Willis Erwin Venable.)

transferred the property to them, did you not?"

"A. Yes, sir."

(Defendant's object to the testimony quoted verbatim above because the questions are leading and suggestive. Objection overruled. Exception.)

Well, I manufactured some "Coca-Cola" up here where the factory was, at first, and then I moved the things down to the corner of Marietta and Peachtree Streets in the basement of Jacob's drug-store. I certainly have been selling "Coca-Cola" continuously since that time.

Cross-examination by Mr. LITTLETON.

At the time these papers were executed I was in the soda water business and ice-cream business. I had a basement about thirty by a hundred and then a part of the back basement about fifty feet square—that was the basement; upstairs, I had twenty-five feet, one side of Jacob's drug-store, for the fountain; that was the place I had below for manufacturing. Ever since that time I have been in the soda-water [379] and none other. I have been in the soda-water business since 1867. I couldn't tell you the number of drinks I sold at my fountain besides "Coca-Cola," but I never sold anything as an imitation of "Coca-Cola" nor anything except the genuine. Yes, sir; I sold root beer at that time, certainly, vanilla, lemon, strawberry, sarsaparilla, and probably fifty other different drinks that somebody got out—and limeade and all such stuff as that. Well, I can't remember whether I had been selling this root beer and sarsaparilla and such things long before I

(Deposition of Willis Erwin Venable.)

had heard of "Coca-Cola." I don't think I had ever sold any root beer before that, but I sold sarsaparilla. I don't remember whether sarsaparilla was at that time about the same color it is now. I suppose it was, that's all made about the same color I think, about, as well as I remember. Yes, sir; I handled ginger-ale at that time, too. Yes, sir; I dispensed these drinks at my soda-fountain, just as I have spoken of, and am doing so to-day, too.

I went down to 107 Marietta Street the first few days, the first few weeks, after we bought "Coca-Cola" until we had time to move it to the basement up there. No, it is not a fact that we never moved these things away, because we did move them away. I don't remember about Mr. A. B. Littleton and Mr. J. C. Mayfield calling on me about two or three weeks ago at my place of business and telling them that I never did move the stuff away from that place, but that I went down there to make it. I know we did move it away. I don't remember whether or not I made the statement to them that we did not move it away. The fact is, I never thought much about it when they were talking with me, I just simply had not refreshed my mind about what we did do with these things. I know we went there and made some for the first few days—the first ten days, may be—after we bought that formula. I said we moved these things up to the corner of Marietta and Whitehall. That was known as the Jacobs' drug-store. No, sir; I don't remember what we moved away from there. Why, I couldn't remember whether anything was

(Deposition of Willis Erwin Venable.)

left down there or not, I don't think there was anything left there that was used [380] in the making of "Coca-Cola." I don't remember all the different little items he did use in making "Coca-Cola,"—there wasn't very many. It didn't take *every* many when we first commenced making it. We sold out to Walker and Dozier because I found I didn't have money enough to run it, it would take more money than I had to put it on the market, that's the reason I sold it. No, sir, I don't remember the kind of packages—the containers,—this "Coca-Cola" was sent to me before I bought it. After I bought it I used some five gallon porcelain lined ice-cream freezers—I keep syrup in those to-day because I think it keeps better than tin or any other metal. Yes, sir; I certainly did sell this "Coca-Cola" syrup over the counter. Yes, sir; and collected the money for it, over the counter, and am doing that to-day. I couldn't say whether or not we shipped it to any dealers, I don't remember whether I did or not. No, I don't remember what Pemberton did after that, I don't remember anything about what became of him. After ten or fifteen days after this purchase by me I never had occasion to go back to 107 Marietta Street. The doctor would drop in to see me once in a while, but I didn't know what business he was in or anything about him. No, sir, at that time there wasn't anybody besides myself and my partners collecting the proceeds of "Coca-Cola" that I know of. No, sir, Asa G. Candler didn't take any "Coca-Cola" from us while we were making it, that I remember of, we

(Deposition of Willis Erwin Venable.)

didn't keep it but a short time. No, sir, I did not go back to 107 Marietta Street and make any "Coca-Cola" there. I can't tell you, sir, how much "Coca-Cola" altogether I did make and sell, not any more than I could tell you how much lemon syrup I made. No, sir; "Coca-Cola" wasn't known very well at that time. Yes, sir, it was just being introduced, just starting. I couldn't say how much we sold, but there wasn't a great deal of it sold; but I had confidence in it, and saw it was a good thing, but I didn't have the money to put it on the market, and Mr. Lowndes said he didn't have it, and didn't care to put up the money. After we bought it I actually made it myself. I bought my coca from Jacobs there,—maybe I got him to order it for me,—and the caffeine I got him to order that, also, from New York [381] in ten pound cans. I took the coca leaves and made my fluid extract of coca myself by percolation—made many a gallon besides what I made for the "Coca-Cola," before that and since—they used that in the drug business, and I have been in the drug business, in drug-stores and working in drug-stores in the soda-fountain and ice-cream business, all my life. I couldn't tell you, sir, whether Dr. Pemberton moved away from 107 Marietta Street or not. Well, I couldn't tell you the distance from my place of business at that time to 107 Marietta St. We were on the corner down here and it was up there right below Spring Street on Marietta Street. I don't know the distance, exactly, I knew where the two places are and traveled it more than a thousand times in my life.

(Deposition of Willis Erwin Venable.)

Yes, sir, the only thing I did with "Coca-Cola" I just sold it in my fountain—that's the only thing I remember doing with it, I don't remember selling it to anybody outside. The fact is, at that time there was very few of them knew anything about it. Mr. Lowndes didn't have anything to do with it,—I mean the manufacturing of it. I couldn't tell you what kind of containers I got this in before Lowndes and I bought. I don't know whether it was in a jug or what it was in—jug or keg—but I think it was in a jug, as well as I remember, but I don't remember exactly what it was in, I am not positive about that. It was a small matter with me, anything that he would send it in, if it was clean, would be all right with me, I didn't pay any attention to that, but I think it was in a jug, though. I don't know that Mayfield ever did make it. No, sir, Pemberton didn't make any more "Coca-Cola" after that. He didn't have anything to make it out of—to make it with, I am satisfied he didn't make it unless he could remember the formula, for he didn't have the formula. No, sir, I didn't think Pemberton had any means, much. I don't know exactly what he was worth. I don't know anything about that part of it. Yes, sir; the upshot of it was we could not furnish the money to finance this business and just sold out.

(Plaintiff here tendered and offered in evidence Plaintiff's Exhibits #78, #79, #80, #81 and #82.)

Deposition of Charles Howard Candler, for Plaintiff.**CHARLES HOWARD CANDLER.**Direct Examination by HAROLD HIRSCH, Esq.
[382]

I reside in Atlanta, Georgia, and my business is that of manufacturing "Coca-Cola." I am vice-president of the Coca-Cola Company. I have been with that company since the fall of 1898—the manufacturing department, largely, shipping clerk, and I went on the road for a little while and managed the New York office for a couple of years, and then, when I became vice-president, it was my principal province to take charge of the manufacturing of "Coca-Cola" syrup. Ever since I have been in charge of the manufacturing, so-called caramel coloring—burnt sugar—has been used to produce the color in "Coca-Cola." We use that solely to color it. Plaintiff's Exhibit #82 is "Coca-Cola" syrup without the coloring—everything else that goes in "Coca-Cola" except the coloring, yes, sir. This caramel has been used in "Coca-Cola" ever since I have known it. Yes, sir, I am in charge of the barrel factory down at the "Coca-Cola" plant and I oversee the making and the painting of the barrels. The color of these barrels is a particular red color which the Coca-Cola Company has been using ever since I can remember. They have never used any other color so far as I know. I have a memorandum in my pocket of the number of barrels and kegs that have been used in barreling and putting up "Coca-Cola" for the past eleven years, painted that color, namely: In 1903,

(Deposition of Charles Howard Candler.)

17,600 barrels; 6,150 ten gallon kegs; 5,300 five gallon kegs; and I put down in the column here the number of jugs so as to balance the account. The jugs were not painted. In 1904, 22,650 barrels; 8,000, ten's; 6,800 five's; in 1905, 31,000 barrels; 10,800 ten's; 9,300 five's; in 1906, 42,000 barrels; 14,700 ten's; 12,500, five's; in 1907, 50,000 barrels; 17,500 ten's; 15,000 five's; in 1909, 70,000 barrels; 24,400 ten's; 20,900, five's; in 1910, 83,800 barrels; 28,300 ten's; 25,140, five's; in 1911, 96,000 barrels; 33,700 ten's; 28,500 five's; in 1912, 110,000 barrels; 38,500 ten's; 33,000 five's; in 1913, 135,500 barrels; 47,300 ten's; 40,600 five's. These barrels and kegs have been shipped to various points in the United States, and some of them abroad—out of the United States. By “various points” I mean to bottling companies, soda-fountains, wholesalers, all over the United States, and some few of them in foreign [383] countries.

(It is stipulated and agreed between Counsel that the sum or value in controversy in this case is more than the sum of \$3,000 exclusive of interest and costs.)

Cross-examination by Mr. LITTLETON.

The Coca-Cola Company first began to make bottling syrup in 1898, and that's when “Coca-Cola” first began to be bottled. I don't recall when the Coca-Cola Company quit making “Merchandise No. 5.” No, I don't remember when they employed the Maywood Alkaloid Works to begin making it, or about when. I have not thought about it—whether it was

(Deposition of Charles Howard Candler.)

about 1905—since I studied that question some years ago, sir, and I don't remember at all. Yes, sir, I had charge of the manufacturing of "Coca-Cola" since 1898, and I made "Merchandise No. 5" before Schaeffer made it. "XQ. 10. What made you change and quit making 'Merchandise No. 5' yourself and begin getting the Schaeffer Alkaloid Works to make it?" "A. Because it was—the policy of the Coca-Cola Company was changed for some reason." (Mr. HIRSCH.—"It is understood that I am objecting to all this line of examination.") I had no information as to what the policy was that was changed, I was just told to discontinue making it. No, sir, I do not know why I was told to discontinue making it, I never questioned it, it was orders from higher up. I have been vice-president of the Coca-Cola Company since 1906, eight years. Yes, sir, I am a member of the Board of Directors but I was not in 1906. I will be 36 years old in December, and I am a son of Mr. Asa G. Candler. I don't recollect that I was making "Merchandise No. 5" when I was first elected vice-president in 1906. I don't remember, that was entirely different, the fact of being elected vice-president had no connection with the manufacturing of "Coca-Cola" at all.

Since I have been connected with the "Coca-Cola" Company they have never advertised or sold this "Coca-Cola" under any other name. Yes, sir; as far as I know it has always been known and sold under the name of "Coca-Cola." If the Coca-Cola Company had sold it under any other name during

(Deposition of Charles Howard Candler.)

the time I have been connected with the company I [384] would have known it. No, sir, the Coca-Cola Company has never sold it under the name of "koke" or "dope." No, sir, I am not a chemist. I don't know whether or not it's a fact that "Coca-Cola" syrup contains a trace of cocaine in it. I never did analyze "Coca-Cola" syrup or "Merchandise No. 5," nor have I ever seen it analyzed.

Yes, sir; I know the firm of Hagan & Dodd. I know there is a firm by that name here, but I do not know the soft drinks they are making. Yes, sir; they have made a drink called "Ko-Nut." I do not know whether or not they are making a drink called "Afri-Cola." I haven't seen much of the "Ko-Nut" for three or four years, I don't think. Yes, sir; I live here in Atlanta—have lived here all the time. No, sir; I never have seen the wagons of Hogan & Dodd, distributing their kegs to customers and I never drank any "Ko-Nut" that I know of, nor have I ever seen any of it that I know of. No, I don't know how many soft drinks there are on the market to-day that are about the same color as "Coca-Cola"—that same general line of color—caffeine or cola drinks, I never thought of it. Of my own knowledge I don't know of any. I have just heard there are certain soft drinks that contain caffeine, so-called "cola" drinks. Well, I have never seen any bottled product of that sort, in bottles, to recognize it. No, sir, the Coca-Cola Company has not as long as I have been in it, ever advertised or labeled any of its containers, or any con-

(Deposition of Charles Howard Candler.)

tainers containing "Coca-Cola" syrup, with the name "Koke" or "Dope." I rather think the man who began to bottle "Coca-Cola" was Whitehead. My impression is that it was in 1898. Yes, sir, we buy second-hand barrels and kegs and put up "Coca-Cola" in them. We buy barrels from second-hand barrel dealers, cooperage people.

Redirect Examination by Mr. HIRSCH.

Well, these second-hand barrels, after they come into our place, are inspected and cleaned out and fixed up ready for our stock, and then, when they are about to be used, they are painted this particular red color, and when they are dry they are sterilized and "Coca-Cola" put in them. (Plaintiff here tendered and offered in evidence Plaintiff's [384½] Exhibit No. 83.)

Deposition of David Emory Bolton, for Plaintiff.

DAVID EMORY BOLTON.

Direct Examination by Mr. HIRSCH.

I reside in Atlanta, Ga., and am a special representative for the Coca-Cola Co. The nature of my work, as such special representative, has been to make different towns throughout different states and get the opinions of the dealers as to what they understand the words "dope" and "coke" to mean when applied to a soda-fountain beverage; also, to make observations at the different fountains as to what spigot or container in the fountain the syrup is drawn from to make the drinks which are served in response to orders for "Coca-Cola," "coke," and

(Deposition of David Emory Bolton.)

“dope,”—whether drawn from the same spigot, or different spigots,—and to observe the labels on the spigots and the advertising, if any, in and about the stores and towns.

I have visited forty-seven towns in all,—would you like me to name them? I will have to refer to my list. This is my original list made at the time by me. I called on Augusta, Ga., and the following towns in South Carolina: Aiken, Blackville, Barnwell, Allendale, Bamberg, Branchville, Orangeville, St. Matthews, Columbia, Newberry, Clinton, Laurens, Enclave, Greenwood, Abbeville, Bolton, Petzer, Anderson, Seneca, Westminster, Easley, Greenville, Spartanburg, Gaffney and Blacksburg. I also called in the following towns in North Carolina: Charlotte, Winston-Salem, Greensboro, Raleigh, Wilmington, Asheville, Reidsville and Salisbury. In Virginia I called on the following towns: Danville, Norfolk, Petersburg, Richmond, Alexandria, Lynchburg, Charlottesville and Front Royal. I also called on Petersburg, W. Va.

The table filed as Plaintiff's Exhibit 93 indicates the places where I called for “Coca-Cola,” “coke,” and “dope,” on separate occasions, and observed customers using those words. At each of these places I would go in and call for “Coca-Cola” and observe the spigot from which the syrup to make the drink was drawn. [385] Later in the day I would again visit the same place and ask for a “coke” and observe the spigot from which the syrup to make the drink was drawn. Still later I would again visit the same store and ask for a “dope” and again observe

(Deposition of David Emory Bolton.)

the spigot from which the syrup was drawn to make this drink. I would also observe the customers coming in and asking for "Coca-Cola," "coke" and "dope" and I would observe the spigot from which the syrup was drawn to make all these drinks. In every instance the syrup to make all the drinks served in response to calls for "Coca-Cola," "coke" and "dope" was drawn from one and the same container, except at Howard's store in Augusta, Georgia, where the fountain had two or more water containers and two or more dispensers. After making these observations, I would then interview the proprietor or dispenser, inform him of the result of my observations as above outlined, and then ask what he understood the words "coke" and "dope" to mean. In each instance the proprietor or dispenser, as the case may be, stated that "coke" or "dope" were understood to mean "Coca-Cola."

(The testimony as to the statements of the dealers to the witness with reference to their understanding of the meaning of the words "coke" and "dope" is objected to because hearsay evidence and mere gossip. Objection overruled. Exception.)

A number of the proprietors stated that they only handled "Coca-Cola" and that, therefore, that was what they gave their customers when they asked for "coke" or "dope." The (*) in front of the name of the store in the following tabulation indicates that the container from which the syrup was drawn to make the drink served in response to orders for "Coca-Cola," "coke" and "dope" was labelled with the name "Coca-Cola." The following is the tabulation referred to: [386]

Town.	Store.	Prop. or Dispenser.
Augusta, Ga.	Howard Drug Store No. 1	Mr. Howard, Prop. Earl Cummings, Dis.
Augusta	*Howard Drug Store No. 2	Mr. Howard
Augusta	T. A. Cardell	Mr. Cardell Nathaniel Fairbrother, disp.
Augusta	Watson Drug Co.	Jacob Watson F. G. Allen, disp.
Augusta	The Model Gro. Store	Mr. Holmes, Prop.
Augusta	H. J. Morkwater	Mr. Morkwater
Aiken, S. C.	Hall's Pharmacy	Mr. Henderson, Mgr.
Aiken	Sanders' Pharmacy	Mr. Sanders, Prop.
Aiken	Mr. Overstreet	Mr. Overstreet, Prop.
Blackville	Hotel Pharmacy	Mr. Wesenger, Mgr., or Prop.
Blackville	E. D. F. Pharmacy	Mr. Epps, Mgr.
Barnwell	Deason Drug Co.	O. A. Best, disp.
Barnwell	F. H. Huggins Drug Store	O.
Allendale	Searson's Drug Store	R. B. Searson, Prop.
Denmark	Denmark Drug Co.	Mr. Willis, Mgr.
Bamberg	Mack's Drug	Mr. McCracken, Mgr.
Bamberg	People's Drug Co.	Mr. J. T. Kelley, Mgr.
Branchville	Steadly's Soda Fountain	W. D. Steedly, Prop., and Disp.
Orangeburg	Lowman Drug Co.	W. A. Cherry, Mgr.
Orangeburg	Doyle Drug Co.	M. S. Williams, Mgr.
St. Mathews	Fair's Pharmacy	W. W. Fair, Mgr.
Columbia	Hudgins Drug Co.	Manager or Prop.
Columbia	Brim & Little Drug Co.	Manager or Prop.
Columbia	Mirt Drug Co.	Manager or Prop.
Columbia	Pinkussohn Cigar Co.	Manager or Prop.
Columbia	Taylor Drug Co.	Manager or Prop.
Columbia	Heywood's Pharmacy	Manager or Prop.
Newberry	Newberry Drug Co.	W. O. Mills, Mgr.
Newberry	Gilder & Weaks Drug Co.	C. D. Weaks, Mgr.
Clinton	Clinton Pharmacy	W. C. Harper, Mgr.
Clinton	Young's Pharmacy	J. H. Young, Prop.
Laurens	Ray's Pharmacy	C. K. Ray, Mgr.
Laurens	Ramsey's Pharmacy	B. F. Ramsey, Prop.
Enoree	Enoree Drug Co.	M. S. Dantzler, Mgr.
Greenwood	Oregon Drug Co.	E. L. Morris, Mgr.
Greenwood	Greenwood Candy Kitchen	Geo. Alexas, Mgr.
Abbeville	Mulford Drug Co.	C. A. Mulford, Mgr.

Town.	Store.	Prop. or Dispenser.
Abbeville	Abbeville Candy Kitchen	Steve Parthenos, Mgr. and Prop.
Belton	Donald Wilson Drug Store	G. S. Cuthbert, Mgr.
Pelzer	Griffin Drug Co.	W. W. Griffin, Mgr.
Anderson	Red Cross Drug Store	L. W. Seals, Mgr.
Anderson	Evans Pharmacy	W. N. Webb, Mgr.
Seneca	Seneca Pharmacy	T. L. Stribling, Mgr. and Prop.
Westminster	Stonecypher	J. H. Stonecypher, Mgr.
Easley	R. F. Smith Drug Co.	Wm. Wyatt, Mgr.
Greenville	Armstrong Drug Co.	J. C. Armstrong, Mgr.
Greenville, S. C.	Doster-Bruce Drug Co.	O. L. Doster, Mgr.
Greenville	Candyland Ice Cream Parlor	E. S. Bellinger, Mgr.
Greenville	Sloan Drug Co.	Thomas Sloan, Prop.
Spartanburg	K. W. N. Pharmacy	Thomas H. Lever, Manager
Spartanburg	Green Drug Co.	J. E. Green, Mgr.
Spartanburg	Aecropolis Ice Cream Parlor	Steve Backades, Mgr.
Spartanburg	Elite Ice Cream Parlor	J. A. Metropolis, Mgr.
Gaffney	Cherokee Drug Co.	J. N. Littlejohn, Mgr.
Gaffney	Gaffney Drug Co.	J. C. Greech, Mgr.
Blacksburg	Cousins Drug Co.	W. G. Cousins, Mgr.
Blacksburg	Iron City Drug Co.	T. S. R. Ward, Prop.
Charlotte, N. C.	Jordan's Drug Store	
Charlotte	Moody Drug Co.	E. J. Caton, Mgr.
Charlotte	Jas. P. Stowe Drug Co.	Jas. P. Stowe, Mgr.
Charlotte	Charlotte Drug Co.	Mr. McLarkin—Mr. Bullock, Prop.
Winston—Salem	O. Hanlon's Drug Store	E. W. O. Hanlon, Prop.
Winston—Salem	Thompson Drug Store	P. A. Thompson, Prop.
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Winston—Salem	Owens Drug Co.	P. J. Brain, Mgr.
Winston—Salem	Hutchins Drug Co.	R. L. Hutchins, Mgr.
Greensboro	Grissom Drug Co.	E. G. Bowers, Mgr.
Greensboro	Sykes Drug Co.	E. C. Sykes, Mgr.
Greensboro	Greensboro Drug Co.	Wm. Johnson, Mgr.
Greensboro	Conyers & Sykes Drug Co.	R. J. Sykes, Mgr.
Danville, Va.	E. M. Wallace Drug Co.	E. M. Wallace, Prop.
Danville	Danville Drug Co.	Harry W. Thomas, Mgr.
Danville	Jacobs Drug Co.	J. D. Pruitt, Prop.
Raleigh, N. C.	Thomas & Son Drug Co.	Wm. G. Thomas
Raleigh	Tucker Bldg. Pharmacy	Gilbert Crabtree, Mgr.
Raleigh	Brantley Drug Co.	J. C. Brantley, Prop.
Raleigh	Wake Drug Co.	J. T. Moore, Mgr.

own.	Store.	Prop. or Dispenser.
nington	Orton Confectionery Co.	E. Dinos, Prop.
nington	Hicks-Bunting Drug Co.	
nington	Woodall-Sheppard Drug Co.	H. M. Cox, Mgr.
nington	Elvington Pharmacy	D. A. Elvington, Owner
folk, Va.	Martin's Pharmacy	
folk,	Cummings Confectionery Store	Louis Cummings, Mgr.
folk,	Burrow-Martin Drug Co.	J. T. Powell, Mgr.
folk,	Truitt's Pharmacy	C. F. Truitt, Prop.
ersburg	Morrison Drug Co.	J. A. Morrison, Prop.
ersburg	Harrison Drug Co.	J. B. Harrison, Prop.
ersburg	Palms Confectionery Co.	W. G. Roberts, Mgr.
amond	Muller Drug Co.	T. A. Muller
amond	Blair's Drug Store	
amond	Crenshaw Cigar Co.	W. D. Crenshaw
amond	McKay Cigar Co.	T. R. Ennos, Mgr.
amond	Grant Drug Co.	W. S. Cavedo, Mgr.
xandria	Warfield Drug Co.	Edgar Warfield, Jr., Prop.
xandria	Gubson Drug Co.	Richard Gubson
chburg	Boston Confectionery	Lewis Vaynes, Prop.
chburg	Craghill Jones Drug Co.	J. P. Jones, Mgr.
chburg	Lambert's Pharmacy	E. D. Williams, Mgr.
eville, N. C.	Globe Cafe & Candy Kitchen	H. C. Theobald, Mgr.
eville	Raysor Drug Co.	C. A. Raysor
eville	Carmichael Pharmacy	R. C. Hawkins, Mgr.
eville	Smith's Drug Co.	Frank Smith, Mgr.
rlottesville, Va.	Pence & Sterling Drug Co.	R. S. J. Sterling, Mgr.
rlottesville	Fitzhugh Bros. Drug Co.	J. S. Fitzhugh, Mgr.
rlottesville	Robert E. Clark Drug Store	Robert Clark, Prop.
nt Royal	Trout & Turner Drug Co.	M. B. Turner, Mgr.
nt Royal	Venable's Drug Store	C. M. Venable, Prop.
ersburg, W. Va.	Wise Grocery Store	W. C. Wise, Prop.
ersburg	Judy & Mooman Drug Co.	G. Mooman, Mgr.
dsville, N. C.	Tucker Drug Co.	R. H. Tucker, Prop.
dsville	Gardner Drug Co.	T. L. Gardner, Prop.
isbury	Main Pharmacy	Stamy Carter, Mgr.
isbury	Peoples Drug Co.	J. R. Trotter, Mgr.
isbury	Smith Drug Co.	Sam Carter, Mgr.

(Deposition of David Emory Bolton.)

I also made what we call consumers' tests in a number of places. A consumers' test is made in this way: I would go to a store and station myself in the vicinity of the fountain for a specified time and make a note of the number of customers who called for "Coca-Cola," "coke" and "dope" during that time. I would get the dispenser to ask each customer who called for "coke" or "dope" if he meant or wanted "Coca-Cola," and then I would observe the replies of the customers. At the fountains at the following places consumers' tests were made and every person asking for "coke" or "dope" in ordering drinks was asked by the dispenser, in my presence, if he wanted "Coca-Cola" and in each instance the answer was in the affirmative. The first column indicates the name of the town; the second, the name of the fountain; the third the name of the dispenser; the fourth the number of calls for "Coca-Cola" observed; the fifth the number of calls for "dope" observed and the sixth the number of calls for "coke" observed:

town.	Store.	Prop. or Dispenser.	CC.	D.	R.
cksville, S. C.	Hotel Pharmacy	T. D. Box, disp.	8	22	
nwell	Deason Drug Store	O. A. Best, disp.		12	
endale	Searson's Drug Store	F. H. Farmer, disp.		18	
mark	Denmark Drug Co.	Willis, Mgr.		6	
hberg	Macks Drug Store	Luke Curry, disp.		27	
ngeburg	Lowman Drug Co.	Ed. Langley		57	
Mathews	Fair's Phar.	Dixon Whitestone, disp.		28	
umbia	Huggins Drug Store	H. G. Sistrunk, disp.		43	
umbia	Taylor Drug Co.	J. C. Bruce, disp.		62	
yberry	Newberry Drug Co.	Dispenser		34	
ton		Gus Mayson		33	
rens	Ray's Pharmacy	Dispenser		61	
enwood	Greenwood Candy Kitchen	Mr. Alexas, Prop. and disp.		47	
eville	Abbeville Candy Kitchen	Steve Parthenos, Prop. and Mgr.		29	
on	Donald Wilson Drug Co.	Lewis Cox, disp.		32	
erson	Evans Pharmacy	Will Adams		41	
enville	Armstrong Drug Co.	J. A. Rebow, disp.		38	
enville	Candyland Ice Cream Parlor	Steve Gorgon, disp.		51	
rtanburg	Aecropolis Ice Cream Parlor	E. C. Morrow, disp.		22	
dney	Cherokee Drug Co.	Dispenser		27	
cksburg	Iron City Drug Co.	Geo. Roberts, disp.		31	
rlotte, N. C.	Charlotte Drug Co.	J. T. Neighbors, disp.		26	
ston—Salem	Owens Drug Co.	L. L. Nunn, disp.		17	
ensboro, N. C.	Conyers & Sykes Drug Co.	K. C. Clendein, disp.		51	
leigh	J. C. Brantley Drug Co.	P. D. Gattis, disp.		37	
ville, Va.	Jacobs Drug Co.	Loyd Bray, disp.		21	
9]					
mington, N. C.	Elvington Pharmacy	W. B. Wilson		26	
folk, Va.	Cummings Confectionery Co.	Chas. Taylor, disp.		18	
ersburg	Palm Confectionery Store	W. J. Adams, disp.		12	
mond	Grant Drug Co.	E. M. Farris, disp.		38	
xandria	Gubson Drug Co.	W. L. Arnold, disp.		18	
chburg	Craghill-Jones	E. E. McDaniel, disp.		12	
eville, N. C.	Carmichael Pharmacy	J. C. Brown, Jr., disp.		18	
rlottesville, Va.	Pence & Sterling Drug Co.	W. R. Munday, disp.		12	
nt Royal	Trout & Turner Drug Co.	L. J. Fristo, disp.		8	
dsville, N. C.	Tucker Drug Co.	J. W. Burris, disp.		5	
sbury	Main Pharmacy	L. D. Joyner, disp.		9	

(Deposition of David Emory Bolton.)

I observed "Coca-Cola" advertising in all the towns I visited and in most of the stores. I did not notice any drink at any of the towns visited, or at any of the stores, advertised under the name of "Dope" or "Koke," except at one place in Bamburg, South Carolina, I saw a card which is filed as Plaintiff's Exhibit #84, and at Seneca, South Carolina the Seneca Bottling Works is bottling a drink named "Dope" and the caps on these particular bottles is the only advertising that I saw of "Dope."

From the observation and consumers' tests I have made as above described, and from my personally asking dealers the meaning of the words "coke" and "dope," I would say that these words "coke" and "dope" are applied to "Coca-Cola." From my interviews with proprietors, dispensers and managers I would say that the meaning of the words "coke" and "dope" is "Coca-Cola" and that that is what they are applied to. "Dope" and "coke" mean, when they are asked for at soda-fountains, "Coca-Cola."

(Plaintiff here tendered and offered in evidence Plaintiff's Exhibit #84.)

Cross-examination by Mr. LITTLETON.

I entered the employ of the Coca-Cola Company April 11, 1914. Before that I was connected with the Pinkerton National Detective Agency. No, sir, I am not necessarily a detective. I am not a detective. I was employed by the Pinkerton National Detective Agency as an operative. I don't know, sir, what the word "operative" means in the detec-

(Deposition of David Emory Bolton.)

tive language. I don't know whether it means a detective or not. I was with the Pinkerton National Detective Agency three years. [390] I can't say, sir, whether the detectives of the Pinkerton National Detective Agency are called "operatives" or not, I can't answer that. Yes, sir, they refer to their men that get up information and go out and attend to things as "operatives." Why, yes, they are detectives—investigators and operatives. No, sir, they do not have detectives aside from operatives—there is no distinction between a detective and an operative. In reply to your question as to whether the word "operative" means about the same thing as a detective, I will say that I think you can put different constructions on the word. I am employed by the Coca-Cola Company as special representative to represent them in a special way. I was employed for the purpose of getting up this special work I have testified to—for the purpose of getting up this evidence. My instructions with reference to getting up this evidence were nothing more than what I have outlined in my evidence.

Redirect Examination by Mr. HIRSCH.

"RDQ. 1. Mr. Bolton, you are employed by the Coca-Cola Company to make any investigations that you might be directed, are you not? A. Yes, sir."

(Objected to by defendants as leading—putting the words in the witness' mouth. Overruled. Exception.)

Yes, sir, I received a stated salary. No, sir, I do

(Deposition of David Emory Bolton.)

not get any reward outside of my stated salary for any investigations I might make.

Recross-Examination by Mr. LITTLETON.

It has been my duty since being with the Coca-Cola Company to carry out this character of work that I have testified to. No, sir, I have not made any investigations in any other cases besides this one, and I have not looked up any special work in regard to substitutions that didn't refer to this case.

(Plaintiff here tendered and offered in evidence Plaintiff's Exhibit #93, being a tabulation of the calls stated therein, which it was agreed might be attached to the deposition.)

Deposition of Dr. Joseph Jacobs, for Plaintiff.

DR. JOSEPH JACOBS.

Direct Examination by Mr. HIRSCH. [391]

I reside at 713 Peachtree Street, Atlanta, Ga. I have been living in Atlanta for thirty-six years. I have known the product "Coca-Cola" nearly ever since I have been here. It is made by the "Coca-Cola" Company, Atlanta. The paper presented to me and marked Plaintiff's Exhibit #76 bears my signature. Yes, sir; that paper was delivered about the date my signature is on there. Yes, I was a member of the firm of Walker, Candler & Company.

Cross-examination by Mr. LITTLETON.

I was a member of that firm a very short time, I think it was formed just probably a year, probably less, from the time we sold out to Mr. Candler. Yes, I am a chemist. "Coca-Cola" was made by one of

(Deposition of Dr. Joseph Jacobs.)

the soda-water men, not under my supervision, but I knew of the formula and what entered into it. Yes, sir; I knew the formula and what entered into it. No, we did not make the extract; in those days it wasn't made out of the *tract*. I don't know whether or not I should answer your question as to whether in those days it was made of coca leaves, or the extract of coca leaves and kola-nuts. Well, it was made from coca leaves then. No, they did not change it while I was connected with the company. At that time "Coca-Cola" had in it only such cocaine as would be contained in the coca leaves. Besides cocaine, coca leaves have in them extractive matter,—cocaine is the only thing of any importance. At that time "Coca-Cola" had just such cocaine in it as came from the coca leaves. I don't know whether it has since been changed or not; it wasn't changed during my connection with it.

Redirect Examination by Mr. HIRSCH.

My connection with "Coca-Cola" ceased, unfortunately, with the transfer of that paper, yes. No, I didn't actually manufacture "Coca-Cola," it was made by Venable.

Deposition of St. Elmo Murray Massengale, for Plaintiff.

ST. ELMO MURRAY MASSENGALE.

Direct Examination by Mr. HIRSCH.

I live in Atlanta, Georgia, and have lived here since 1880. I am in the advertising business with the Massengale Advertising Agency, which concern

(Deposition of St. Elmo Murray Massengale.)

I have conducted for the past nineteen years. I travel about two-thirds of my time, covering the entire United States. I am familiar with the advertising of soft drinks. "Coca-Cola" is [392] advertised everywhere and universally in all forms; namely, in newspapers, magazines, street cars, on bill boards, by glass signs, novelties, etc. I have seen it everywhere. The feature displayed in "Coca-Cola" advertising is the trademark. By the trademark I mean that (indicating one of the Exhibits containing the name "Coca-Cola" in script) it's the peculiar formation of the words "Coca" and "Cola," and the name itself, "Coca-Cola." In my experience around the country for nineteen years in the advertising business I have never seen a drink or any substance or beverage advertised under the name of "Dope" or "Koke." Outside the city of Atlanta, I have never seen any drink or beverage advertised under the name of either "Ko-Nut" or "Afri-Cola."

Cross-examination by Mr. LITTLETON.

No, sir; I have never seen "Koke" advertised. I have traveled in Missouri, Texas, Tennessee, Louisiana, Arkansas, South Carolina, Mississippi, Florida, Georgia and Alabama. I have never seen "Koke" advertised either on fans, umbrellas, cards, match boxes or in newspapers or in any form at all. I have seen "Coke's Dandruff Cure" but I have never seen any "Koke." Yes, sir, the dandruff cure is spelled "C-O-K-E"—isn't that the way you spell "Koke?" I have never seen any advertising of a

(Deposition of St. Elmo Murray Massengale.)

soft drink with the word "Koke" on it. Yes, sir, I frequent soft drink dispensatories, I take a drink at the soda-fountains. Well, I do not charge my mind with the advertisements I see there, particularly, but I think I would have seen it if it had been advertised. This particular factory of the Coca-Cola Company here in Atlanta is not the biggest manufacturing enterprise in Atlanta, but the Coca-Cola Company itself is, of course. Not only does the advertising of a home product made by a home company attract my attention when I am away from home, but I particularly notice anything that imitates or attempts to take anything from "Coca-Cola" because I have advertised "Coca-Cola" myself for something like fifteen years. I have been doing advertising work for the Coca-Cola Company for about fifteen years; yes, sir. [393] I have seen the advertisements of Hires Root Beer, but I don't recollect the advertisement of any other kind of root beer. I never have seen the advertising of "Ala-Cola," nor of "Tru-Cola"—I have seen the name "Rye-Ola," away from home. Yes, sir, I think I have seen "Wise-Ola" in Kansas City—I am not sure just where. I have seen "Chero-Cola" advertising recently, yes, sir. I don't recall the "Celery-Cola" advertisements. "My-Cola" is a new one on me. "Lemon-Cola"—seems to me like I saw that in Norfolk. Never heard of "Mint-Cola" or of "Ameri-Cola." I never heard of "Cola" except in connection with some other front name. I have never heard of "Cook-Ola." My business does not consist in advertising exclusively

(Deposition of St. Elmo Murray Massengale.)

for the Coca-Cola Company, I have nearly four hundred customers. For fifteen years I have done work for the Coca-Cola Company and in my travels through the several states in my line of business I haven't seen advertisements for these other drinks except as specified in my testimony above—I might have seen them, but if I did they passed *out without* my remembering them. If they did advertise any it isn't now in my mind at all. I was in Atlanta about seven or eight years ago, but I don't recollect any advertising at that time of any soft drink advertised as "Dope." Let me say just this, there was somebody—and it might have been "Dope"—that opened a factory right opposite the "Coca-Cola plant. It was an imitation of "Coca-Cola," but I don't recollect the name of it. I don't recollect any particular time, either. I wouldn't be able to state the year or anything of that sort, but I know they have been doing it quite a while. The Exhibit marked defendant's exhibit #85 is what we call a metal sign—it isn't metal either, it has the appearance of metal, but it is probably manufactured of paste board—an advertising sign. It has on it the words "Drink Coca-Cola" in gilt on a solid black background. That's one of the Coca-Cola Company's regular forms of advertising. I don't know how long they have been using that because we don't handle that particular line. The exhibit marked defendant's exhibit #86 seems to be a glass sign. It has on it the words "Drink Coca-Cola" and "Pay Cashier." [394] That's also gilt on a black background. The

(Deposition of St. Elmo Murray Massengale.)

gilt of this sign differs from that of Exhibit #85 in that one has a frosted appearance and the other is smooth.

Redirect Examination by Mr. HIRSCH.

I thought at first that Plaintiff's Exhibit #85 was a metal sign, but it is made of paste board and looks like a metal sign. Plaintiff's Exhibit #87 is the same kind of a sign, but there is no gilt about it.

(Plaintiff here tendered and offered in evidence Plaintiff's Exhibit #87, and the defendants tendered and offered in evidence the Exhibits marked Defendant's Exhibits #85 and #86.)

Deposition of William P. Heath, for Plaintiff.

WILLIAM P. HEATH.

Direct Examination by Mr. HIRSCH.

I reside in Atlanta, Ga., and have lived here for 25 years or more. I am a chemist connected with the N. P. Pratt Laboratory. I have been engaged in the profession or practice of chemistry for nearly 29 years. I received my scientific education at the Georgia School of Technology. I have had experience in all kinds of miscellaneous analyses during the last 20 years. For the last 3 years I have made a specialty of making analyses of soft drinks. I have known the product "Coca-Cola" for about 20 years. The Coca-Cola Company makes "Coca-Cola." Yes, sir, I have had some experience in making analytical examinations of "Coca-Cola." I have made examinations as to the caffeine content, specific gravity and acids and coloring matter. Oh, I expect I have made several hundred examinations

(Deposition of William P. Heath.)

of "Coca-Cola" along those lines. The coloring matter I speak of is caramel—really burnt sugar. Yes, sir; that coloring is used in "Coca-Cola" to give it its characteristic color. No, sir; it does not serve any other purpose in "Coca-Cola" except to give it its color.

Cross-examination by Mr. LITTLETON.

No, sir; I am not employed by the Coca-Cola Company. Of course, we do some work for them, but it is on a fee proposition, we have an independent chemical laboratory. We have been doing a good deal of special work for the Coca-Cola Company for three years. Caramel has a taste by itself,—it has a taste,—but that taste is practically destroyed when it is put in the "Coca-Cola" syrup. [395] The amount used is very small, a fraction of one per cent, I think—less than a half of a per cent. I question whether you could taste the difference with or without it. I have tried it with and without the caramel, but I couldn't notice any difference. The formula for "Coca-Cola" has not been changed since I have been analyzing it. I have analyzed the coca and cola extracts used in the preparation for "Coca-Cola" syrup for its alcoholic contents. I only know from hearsay whether or not it has fluid extract of coca leaves in it. My understanding is that it has coca leaves extract in it. I understand that this extract is made by a process in which the cocaine has been removed. I am testifying now from hearsay. If the cocaine is removed from the coca leaves there is left the extract of coca leaves—only the alkaloids are

(Deposition of William P. Heath.)

taken out. What is left is the extract of the leaves and the tannin; whatever soluble matter comes out of the leaves is left in there, the coloring matter and everything that this extract takes out—only the alkaloids are removed. The coloring matter is a distinct light brown color. Caffeine is in the cola-nuts. I don't think there are any other alkaloids in the coca leaves except the cocaine and what we call cocaine derivatives—similar bodies to cocaine. I don't know what else there is in the coca leaves of any physiological or chemical properties aside from the alkaloids. I don't know whether there is anything left in the coca leaves of any physiological or chemical properties after the alkaloids are taken out. I said I had analyzed "Coca-Cola" syrup two or three hundred times—partial analyses, not everything in it. I analyzed for the specific gravity the phosphoric acid, sugar and caffeine. I found about .19 per cent of caffeine in the syrup. That analysis was made within the last year. I don't know how much caffeine 125 pounds of cola nuts would yield. I don't know what percentage of caffeine is in the cola nut nor do I know what percentage of cocaine is in the coca leaves except that it is very small.

Redirect Examination by Mr. HIRSCH. [396]

There are seven certified coal-tar colors allowed by the Pure Food Laws to be used in coloring soft drinks which are no more expensive than caramel. I have examined "Coca-Cola" as served at fountains, for alcohol, but I have never found any alcohol served at fountains with a glass of "Coca-Cola."

(Deposition of William P. Heath.)

There is less than a half per cent. Anything less than a half per cent is considered non-alcoholic.

Recross-examination by Mr. LITTLETON.

I don't remember the names of the seven other colors I refer to but there are three shades of red, and orange, yellow, blue and green. They are coal-tar colors. They are known on the market as certified coal-tar colors. Yes, sir, they have a name, I think they are all known by their numbers. These colors have been in use for a long time, but they have only been allowed since the Pure Food Law went into effect; the others have been disbarred. They have been in use for a long time, years and years, a good many of the coal-tar colors, but the use of all of them is prohibited by the Pure Food Laws except these seven. Caramel coloring has been in use a long time. It has been in universal use for coloring all kinds of beverages, not only soda water drinks, but whiskeys, wines and beer and flavoring extracts, as long as I can remember. I suppose it is the most universally used coloring among the food products. The fact of the business is, it is absolutely harmless as a coloring matter and has no coal tar in it at all.

**Deposition of Asa G. Candler, for Plaintiff
(Recalled).**

ASA G. CANDLER (Recalled).

Cross-examination (Resumed) by Mr. LITTLETON.

Yes, sir; I was on the stand yesterday. Yes, a long time after I bought "Coca-Cola," I manu-

(Deposition of Asa G. Candler.)

factured the extract of coca from the coca leaves. I don't do that now; no, sir. I don't remember when we changed. No, I don't remember about how many years ago it was. After we changed, we got our coca leaves from where we are getting them now. "XQ. 8. What is the name?—Shaeffer Alkaloid Works?" "A. That's what you say." "XQ. 9. Isn't that it?" "A. You don't need that information,—sure."

I don't remember how long I manufactured this extract after I bought "Coca-Cola,"—is isn't necessary, I don't think for me to remember. I have'nt tried to remember. I don't try to remember it at all. [397] It is at least as much as five years. I don't know, sir, whether it is ten or not, I don't recollect. You ask if we didn't make this change about 1906; now what do you think of that, Mr. Hirsch? These folks here are trying to extort from me all they can get for the interest of their client. I know some things—I don't remember the dates. (Mr. HIRSCH. "You can tell what contract was entered into if you remember it.") Let me see now—you want these gentlemen to know that? I don't want to give them any more than I am obliged to, I know who I am fooling with. Probably nine years ago, that will make it back to about 1906, wouldn't it? I think probably about 1906,—oh, it was further back than that,—the Spanish war was in 1898—it must have been somewhere about 1900. That's what I fix it by; I am trying to fix it by other things. I know where I was at the close of the war and know why I was there;

(Deposition of Asa G. Candler.)

it must have been made in 1899.

“XQ. 16. The same amount of cocaine in the extract, after you made that change, as there before?”

“A. What sort of question is that?—never was any cocaine in it.”

(Objection by plaintiff as improper cross-examination and incompetent.)

“XQ. 17. You say there never was any cocaine in it? A. Never was. XQ. 18. From the beginning? A. From my beginning.”

No, sir, I was not associated with Dr. Jacobs; I was associated with Walker, Candler & Company. They never made any “Coca-Cola,” as far I know—Walker, Jacobs & Company, or whatever it is, as far as I know. Yes, sir; we began making it in 1888, we were making it since 1888. No, Dr. Jacobs wasn’t associated with me in the manufacture at all, that’s my recollection, isn’t that the history, Mr. Hirsch? (Mr. HIRSCH.—“He testified he didn’t. Did he testify that? Why of course he didn’t, that’s my recollection. “Coca-Cola” was made while Walker, Candler & Company were in existence. Dr. Jacobs was a member of that firm, but I don’t think he ever made any “Coca-Cola”—there never was any occasion for him doing it, he was running a retail drug store and I was running a wholesale. [398] Why, certainly he would know better about that than anybody else, if he made it, I expect he would.

The reason why I quit making this extract myself and employed Dr. Schaffer to make it, is because I

(Deposition of Asa G. Candler.)

thought it was to my interest to do it. You ask how was it to my interest; I don't think I need answer that; what about it Mr. Hirsch? (Objection by plaintiff as incompetent, irrelevant and immaterial.) Because with his facilities and the apparatus he had, he could manufacture it for me cheaper than I could. I don't know that he would manufacture it better than I could—I am not going to say so to you. If I testified yesterday that the manner in which I made my extract of coca leaves was not the same as Parke, Davis & Company's method I was testifying to something I didn't know about except by the books; it was like your question about the coca leaves—I could have referred to the U. S. Dispensary and told you gentlemen "cocaine"—I wasn't much disposed to gratify you gentlemen by saying "cocaine." No, I won't explain the method by which I got this extract from the coca leaves, unless I am obliged to. (Objection by plaintiff and the witness advised by plaintiff's counsel to decline to answer the question, on the ground that it is a trade secret.) I am not here to tell you things that you can get for the benefit of your client.

The testimony of Charles Howard Candler—who is my son, of whom I am very proud,—in the Government libel suit at Chattanooga, against "Coca-Cola," which testimony is set out below, states substantially the process by which he made the extract from the coca leaves for the Coca-Cola Company prior to the time we employed the Schaffer Alkaloid Works to make it. The testimony referred to is

(Deposition of Asa G. Candler.)

as follows: "We would buy the whole leaf in bales and grind it in a mill; we would also buy cola nuts in bogs and mix them—I have forgotten the proportion—it has been so long—in a percolator, first mix up in what we called a wooden bog—wetted it down, together with a certain quantity,—just a crude box for packing—and added a certain quantity of phosphate of lime, and after they were thoroughly wetted, packed them in a percolator, [399] so called *magma* (?) and let them stand possibly twenty-four hours, and then we put on them diluted alcohol, to which the white or a California wine had been added, in same proportion, the exact proportion I forget, and let it run out to a stated quantity, in other words, a reservoir under that, and when the quantity that we had figured on making was run out, we would stop the process."

Yes, sir; that's substantially the process by which we extracted the extract from the coca leaf for use in making "Coca-Cola." That's the method we pursued before we got the Schaffer Alkaloid Works to make the extract.

Redirect Examination by Mr. HIRSCH.

Cocaine was never a part of the formula of "Coca-Cola," and that's proven by a good many witnesses, too, you know.

Deposition of Thomas Leslie Boswell, for Plaintiff.

THOMAS LESLIE BOSWELL.

Direct Examination by Mr. HIRSCH.

I live in Atlanta. I was formerly with the Pink-

(Deposition of Thomas Leslie Boswell.)

erton National Detective Agency, but am now employed by the Coca-Cola Company, as special representative. Yes, sir; I was a detective when I was with the Pinkerton National Detective Agency for about four or five or six months. As special representative of the Coca-Cola Company my duties have been to call on dealers and various soda-fountains throughout the country handling fountain beverages.

I have visited the following towns: Collins, Ellisville, Laurel, Meridian, West Point, Starksville, Mason, Columbus, Oklone, Corinth, Iuca, Ripley, Pontotoc, and Oxford, Mississippi; Montgomery, Tuskegee, Selma, Eufaula, Dothan, Birmingham and Red Bay, Alabama, Pensacola, Tallahassee, Palatka, Jacksonville, Lake City, Ocala and Tampa, Fla.

The tabulation set out below shows the places where I called and the names of the proprietors or dispensers whom I interviewed. I would first go up to the fountain and ask for "Coca-Cola" and observe the spigot from which the syrup was drawn to make the drink. [400] Later in the day I would again visit the same store and ask for a "dope" and observe the spigot from which the syrup to make this drink was drawn, and still later I would again call at the same store and ask for a "koke" and observe the spigot from which the syrup to make this drink was drawn. I would also stand in the vicinity of the fountain on these occasions and observe the spigots from which the syrup was drawn to make and drinks served to customers who asked for "Coca-Cola," "coke" and "dope." In the following tabu-

(Deposition of Thomas Leslie Boswell.)

lation the syrup used to make all the drinks served in response to requests, both by myself, and by the customers whom I observed calling for drinks by those names, was drawn from the same spigot or container in the fountain without exception. After making these spigot tests I would then interview the proprietor or soda dispenser at the establishment visited, inform him of the result of my spigot test, and then ask him what he understood the words "dope" and "coke" to mean when applied to soda-fountain drinks. In each and every instance the proprietor or dispenser without exception stated that he understood these words "dope" and "coke" to mean "Coca-Cola." (The alleged statements of such proprietors and dispensers as to their understanding of the meaning of the words "dope" and "coke," as thus detailed by the witness, are objected to by defendants because hearsay and mere gossip. Objection overruled. Exception.) The (*) in the tabulation below in front of the name of the store indicates that the container from which the syrup was drawn to make these drinks was marked "Coca-Cola." In this tabulation the first column indicates the name of the town, the second the name of the store, the third the name of the proprietor or dispenser interviewed, and the fourth the number of calls for "Coca-Cola" during my observation, the fifth the number of calls for "dope," and the sixth the number of calls for "coke" during the period of my observation.

The tabulation referred to follows:

		Prop. or Dis.	CC. D. K.	
est Point, Miss.	*P. H. White Drug Co.	Jim Figure, d.		
	City Hall Drug Store	Mr. Turnipseed		
	E. P. Wilson Drug Co.			
	J. B. Johnson	Mr. Tomlinson, d.		
est Point	P. L. Bouchillon	P. L. Bouchillon		
	Barksdale & Bennett Grocery Co.			
01]				
arksville	*Jackson & Son Drug Co.	J. A. Jackson		
arksville	J. A. Clardy	J. A. Clardy	1	2
arksville	J. T. Kirk		1	
arksville	*Jas. J. Gill			1
arksville	Cox Bros. Grocery	Earl Cox		3
acon	*C. L. Ferris Book Store	C. L. Ferris	1	2
	*Nichols & Dorah Gro. Co.	L. T. Dorah		
		J. Q. Nichols		
	Gem Pharmacy	E. E. Hammond, P.		
		T. W. Jackson, Jr., d.		
	*Murphy Drug Store	Ed. M. Murphy, P.		
		S. T. Pennington, d.		
		Henry Pattee, d.		
	L. C. Tucker, Grocery	L. C. Tucker		
olumbia	Johnson & Cain Drug Store	E. C. Johnson and S. L. Cain, Ps.	1	1
	Weaver & Harrington	W. B. Harrington		
	Street's Drug Store	W. B. Street		2
	*John R. Laws Druggist			
	Wilson Drug Store	Mr. Wilson	1	1
olumbia, Miss.	L. E. Lides Drug Store	L. E. Lides, P.		
	L. E. Mayfield Drug Co.	L. E. Mayfield		1
olone	Elliot & Bell	Mr. Bell, P.		3
	L. E. Gast Bros., Gro.	L. E. Gast		
	Bearden & King Drug Store	W. E. Bearden		2
	Liggen & Bros.	R. H. Liggen, P.		
rinth	C. A. Turner, Gro.	C. A. Turner, Prop.	2	
	H. E. Walker	R. C. Battles	4	2
	J. M. Mitchell's Pharm.	J. A. Mitchell, P.		
	Henry's Pharmacy	Mr. Henry, P.		
	*McVay & Co.	R. R. McVay		2
	M. M. McAnnis Drug Co.	Mr. McAnnis	1	2
	H. M. Stone's Restaurant and Bakery	H. M. Stone		
	Corinth Drug Co.	H. M. & T. F. Seigman, Ps.		
lly Springs	Pure Drug Co.	K. C. Campbell, P.		
		J. L. Alverson, d.		
	D. J. Oliver	D. J. Oliver, P.	2	2

		Prop. or Dis.	CC. D. K.		
		Joe Howard, d.			
	L. H. Daney	L. H. Daney, P.	1	1	
	W. C. Robinson	W. C. Robinson		1	
Ripley	C. M. Pfyfer & Co.	C. M. Pfyfer	1	1	
	R. R. McCord	R. R. McCord	1	1	
Red Bay, Ala.	Red Bay Drug Co.	J. A. Gray, P.	2		
Pontotoc, Miss.	Furr & Carter Drug Co.	J. M. Furr and R. E. Carter, Ps.	1		
Pontotoc	C. D. Mitchell & Co.	C. D. Mitchell, P.	1	1	
		B. B. Anderson, Cl			
		S. V. Pittz			
		E. C. Nesbitt, d.			
Oxford	Chilton Drug Store	C. W. Chilton, P.			
	Rowland Drug Store	Herron Rowland, P.			
	Bramlett & Sons	Eugene Bramlett			
Montgomery, Ala.	C. M. Chatfield Drug Co.	C. M. Chatfield	4	2	1
	J. J. Johnson Moore	Carter Manton, D.	2	4	
		J. Johnson Moore, P.			
	May's Bakery and confect.	Duncan May and Stewart, Ps.		3	1
	Lyon Head Drug Store	C. T. Ruff, P.		3	1
Tuskegee	L. C. Lewis	Mr. Lewis, P.	2	5	
	Hardin Howard Drug Store	Hardin Howard		2	
	Johnson Bros. Drug Store	E. D. Johnson, P.		2	
Selma	Rockmille Bros.	R. R. Rockmille	6	5	
	G. A. Swift	E. J. Word, d	1		1
	Tillman Drug Co.	W. P. Cook, Mgr.	3	5	2
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Pensacola, Fla.	Central Pharmacy	M. B. Scott, Mgr.		2	
	J. S. Pinkussohn Cigar Stand	R. H. Capers, d. and manager	4	9	1
	Balcom Drug Co.	B. F. Balcom, Mgr.	1	4	
Tallahassee	Holmes Drug Co.	J. McNair	1	6	
		C. N. Tombs, P.			
	Hardee-Smith Co.	L. K. Cohen		1	
		J. Johnson, Clk.			
Lake City	De Soto Drug Co.	M. H. Tibbals, Mgr.			
	C. E. Lewis	C. E. Lewis, P.	1		
	A. R. Wise & Co.	A. R. Wise	1	5	
Jacksonville	Dr. William D. Jones' Drug Store	Wm. D. Jones, P.		5	2
	J. Daniel Boone & Co.	L. M. Holmes, Mgr.	1	3	
	Clark's Drug Store	E. C. Clark, Mgr.	5	10	
Palatka	City Drug Co.	J. H. Houghton, P.	2		2
	Ray's Confectionery	Jas. Ray, P.	2		
	Smith's Confectionery	L. H. Smith, P.			
Ocala	Gerrig's Drug Store	J. J. Gerrig	4	2	
	T. W. Traxler	T. W. Traxler, P.		1	

(Deposition of Thomas Leslie Boswell.)

	Court Pharmacy	J. B. Harrel and H. N. Walters	2	
umpa	Tibbett's Corner	W. H. Tibbetts, P.	4	6
	Val's Corner	Val. M. Antuomo, P.	4	1
		B. L. Robinson, Mgr.		
	Cotter's Pharmacy	Le Roy Cotter, P.	7	7
than, Ala.	M. A. Ellison Drug Co.	R. C. Ellison		
	McCullom's Drug Store	N. H. McCullom, P.	2	3
		D. S. Nash, Prescription clerk, Albert Stevenson, disp.		
	Nix Drug Co.	R. Q. Nix, P.	2	3
		1 call for a "shot"		
rmingham	Parker Drug Co.	Roy Armstrong, Mgr.	4	8
		Geo. W. Griffith, d.,		
	John W. Patton Drug Co.	C. Q. Loyd, Mgr.	1	
	Adams' Pharmacy	A. R. Moody, Mgr.	3	3

At a number of the establishments visited I also made consumers' tests,—that is to say, I instructed the soda dispenser to ask each and every customer who called at the fountain for either "coke" or "dope" if he meant or wanted "Coca-Cola." I stationed myself in the vicinity of the fountain where I could hear the questions asked by the dispensers and the replies given by the customers. In every instance, without exception, where the customer asked for "coke" or "dope" and was asked by the dispenser if he meant or wanted "Coca-Cola" the customer replied that he did. Below is a tabulation of my consumers' tests. The first column indicates the name of the town, the second the name of the store, the third the number of calls for "Coca-Cola" and the fourth the number of calls for "dope" and the fifth the number of calls for "Coke"; [403]

		CC.	D.	K.
Corinth, Miss.	Dr. M. M. McAnnis Drug Store	62	103	12
Holly Springs	D. J. Oliver	27	21	5
Pontotoc, Miss.	C. D. Mitchell & Co.	37	5	3
Oxford, Miss.	Chilton Drug Store	46	52	6
Montgomery, Ala.	C. M. Chatfield Drug Co., Disp. Wilkins, Rankin, White, Bradford	51	41	9
Montgomery, Ala.	J. Johnson Moore; Disp. Wade Pruitt and Carter Masten	41	64	1
Montgomery, Ala.	May's Bakery and Confectionery (20 min.)		3	1
Selma, Ala.	Rockmille Bros. C. H. Hurley J. Eagle	22	20	
Pensacola, Fla.	Central Pharmacy Mgr. Mr. Scott Disp. C. E. Bond R. T. Shuttleworth Dixie Golden	8	6	3
Tallahassee, Fla.	Holmes Drug Co. Prop. J. E. McNair Disp. J. R. Hartsfield J. C. Savage	16	27	
Lake City, Fla.	A. R. Wise & Co. Disp. J. L. Reims Wilbur Townsend	10	14	4
Jacksonville, Fla.	Clark's Drug Store, E. C. Clark, Mgr. Disp. R. H. Holmes Wm. Holmes R. Scott H. T. Stone	178	139	6
Palatka, Fla.	City Drug Co. Prop. J. H. Houghton Disp. R. B. Holden N. O. Niles Pelton Wilkerson	5	11	
Ocala, Fla.	Court Pharmacy Prop. J. B. Harrell Disp. J. W. Dewey Bedford Caldwell Sam Burford	22	32	6

(Deposition of Thomas Leslie Boswell.)

		CC.	D.	K.
ampa, Fla.	Cotter's Pharmacy Prop. LeRoy Cotter Disp. Harry B. Davis H. C. Brannan B. C. Knight Roy Hanter Carter C. Loyd	107	142	3
othan, Ala.	Nix Drug Co. Prop. R. Q. Nix Disp. O. W. Sagg Harvey Gover	15	21	
irmingham, Ala.	John W. Patton Drug Co. Mgr. C. A. Loyd Disp. J. E. Curry Vance Thompson W. D. Calloway	65	40	3
irmingham	Adams' Pharmacy A. R. Moody, Mgr. Disp. R. T. Wimson R. A. Pruitt H. L. Cage	265	425	27

(Also 13 calls for "shot"; 2 calls for "Shot-in-the-arm"; 1 call for "Candler's High-ball"; 2 calls for "One-with and one-without.") [404]

Out of 22 consumers' tests I heard "Coca-Cola" asked for 1,320 times. There were 1,639 calls for "dope," 104 calls for "coke" and 29 miscellaneous calls. In each instance, as heretofore, when "dope" or "coke" or miscellaneous calls were called for at the fountain the dispenser asked the consumer, "Coca-Cola"? or "Do you mean 'Coca-Cola'?" and the consumer replied in each instance that only "Coca-Cola" was meant. In all of the towns I visited I saw "Coca-Cola" advertising everywhere. It was on signs, boards, bill boards and painted on the sides of walls, stuck up over soda-fountain, on the windows of drug-stores, etc. I did not see any

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advertising of any beverage under the name of "Koke" or "Dope" except at Pontotock, Miss. At that place I went into a small fountain in the front end of a drug-store owned by Ferguson & Reed and called for a "Coca-Cola," and Mr. Ferguson stated that he only had "Dope" and pointed to the wall and showed me the "Dope" and "Koke" sign, and I asked him why he did not sell "Coca-Cola" and he said he was a bottler of "Dope" and "Koke." At Starkesville, at the Jackson & Son Drug Company, during my interview with J. A. Jackson, he stated that he tried "Koke" once and the customers came back on him and said, "That's Hell," and so he quit handling it. In my interview with C. L. Ferris, proprietor of the C. L. Ferris Drug Store, Macon, Miss., he stated, among other things, that a representative of the Southern Koke Company of New Orleans had called on him recently and stated to him that he had a product that was as good as, or better than, "Coca-Cola" and tried to induce him to buy a barrel of "Koke" syrup, and Ferris told the representative that to show what he, Ferris, thought of his "Koke" product, he would not have his trade to see a barrel of his syrup for \$500 cash. In my interview with Mr. E. C. Johnson and Mr. S. L. Cain of the Johnson & Cain Drug Store, Columbus, Mississippi, those gentlemen stated, among other things, that they would not allow a barrel of substitute to be seen in their store for any price. In my interview with Mr. McAmis of the H. M. McAmis Drug Company at Cornith, Mississippi, Mr. McAmis

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told me that he had a five gallon keg of "Koke" manufactured by the Southern Koke Company, in his store room for seven or eight years. "Q. 123. Look at your notes; did he say he had that seven or eight years?" "A. Yes, sir, he [405] says 'I have had this five gallon keg of syrup manufactured by the Koke Company in my store room for probably 7 or 8 years, that I never used it and it has been setting back there with dust on it.'"

Besides calls for "Coca-Cola," "koke" and "dope" there were a good many miscellaneous calls such as "shot in the arm," "shot," "coffin varnish," "embalming fluid," "one-with-and-one-without," "give me a brick," "put a little lime in it," and quite a variety of other calls. Each of the customers that called for a drink by these miscellaneous calls was also asked by the dispenser in my presence if he meant thereby "Coca-Cola" and without exception each customer replied in the affirmative. In my interview with Mr. Wise of the A. R. Wise & Company drug-store at Lake City, Florida, Mr. Wise stated that he was trying out "Koke" syrup, but would stop at once, as the drink was a bad imitation, and ship the syrup back to New Orleans, La. He further said that a representative of the Koke Company called on him and stated, "You have calls for 'Dope' and 'Koke' haven't you"? He said, "Yes." The Koke Company representative then said, "Why don't you sell them 'Koke' and 'Dope' syrup, it's unfair to the Koke Company, when they call for 'Koke,'—we have got these names copyrighted, why

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don't you sell them 'Koke' ''? Mr. Wise stated that after they had talked it over, and after the salesman had shown him a sample, and after he tried the sample, that he ordered a 30 gallon barrel of "Koke" and had up to that time tried it out probably 15 days, and from his observation, from what the people stated, he said it was a bad imitation of "Coca-Cola" and that he had different people come back on him and kick—said it didn't taste like "Coca-Cola."

There are various ways in which customers ask for "dope." Some say "give me a dope," others "dope and lime," or "two dopes." In asking for "coke" they usually just say "coke" or give me "two cokes" or "coke and lime," "coke and cherry," and some people say "give me a 'cherry-coke' or a 'lemon-coke.'" The public use different expressions over the country in asking for it.

From my personally asking for "Coca-Cola," "dope" and "coke," from my interviews with dispensers, from my observations of the advertising of "Coca-Cola" and the want of advertising of "Dope" [406] or "Koke" and from what I have called "consumers' tests," the words "dope" and "Koke" mean "Coca-Cola" and are applied to "Coca-Cola" I have visited 29 towns and have interviewed 160 proprietors, managers and dispensers. I observed 150 calls for "dope," 26 calls for "koke" and 120 calls for "Coca-Cola." The syrup used for making the drinks served in response to all of these calls was drawn from the same container. In the con-

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sumers' tests above-described I heard the questions as put to the consumers by the dispensers. I carried out 22 consumers' tests. I heard the responses of the customers to the questions of the dispensers. Every customer asking for a "dope" or "Koke" replied, when asked by the dispenser if he meant or wanted "Coca-Cola," that he did.

At the City Hall Drug Company, in West Point, Miss., Mr. Turnipseed said that he recognized the names "dope" and "koke" as nicknames for Coca-Cola, but that he didn't sell Coca-Cola because it was cheaper to buy something else and he had recently been in bankruptcy and his credit was not very good with the Coca-Cola Company.

At Jackson & Son, Drug Company, in Starkesville, I interviewed J. A. Jackson who stated that he had been in business for 15 years and recognized "dope" and "koke" as nicknames for Coca-Cola; he said he had tried "Koke" once and the customers came back on him and said "That's Hell, so I quit."

Mr. E. E. Hammond, proprietor of the Gem Pharmacy, Macon, Miss., stated that the representative of the Southern Koke Company of New Orleans, La., said that he had a product manufactured by the Southern Koke Company that he could save 50¢ per gallon on instead of selling Coca-Cola.

In my interview with Mr. Pfyfer, of C. M. Pfyfer & Co., Ripley, Miss., he stated that a representative of the Southern Koke & Dope Company, of New Orleans, had called and promised to ship him, complimentary, half a gallon of "Koke" syrup to be tried

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out at his fountain and if it sold he would ship him a ten-gallon order; instead of shipping the half gallon, they shipped a gallon and raised his order from ten gallons to a half barrel, [407] and he was notified by the Railroad Company that there was a half barrel of "Koke" syrup consigned to him with the way bill from the Southern Koke & Dope Company of New Orleans. Mr. Pfyfer stated that the representative of "Koke" Company said that it could be dispensed for Coca-Cola, with the consideration that, even if the people couldn't tell the difference, he would sell his product instead of Coca-Cola. The representative of the Southern Koke Company made a proposition to him that, if he would ship him half gallon of his syrup and it would sell and people couldn't tell the difference from Coca-Cola syrup, he, Mr. Pfyfer would order ten gallons. (Objected to as hearsay.)

Mr. Chilton, of the Chilton Drug Store, Osford, Miss., stated that a lady representing the Southern Koke Company called on him and tried to sell him "Koke" syrup and said he couldn't tell the difference between the "Koke" and the "Coca-Cola" syrup. "Well" said Dr. Chilton, "Why don't your Koke Company sell their syrup to the Coca-Cola Company, as they would be glad to get it"? and then the lady left the store. Dr. Chilton said it was a fine looking girl and if she hadn't been selling "Koke" or been selling anything else but "Koke," "I would have bought it, and had I not been selling Coca-Cola I would have bought it," but said he

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couldn't hardly sell Coca-Cola and Koke at the same time as it would be demoralizing to the trade.

Mr. Howard of Hardin Howard Drug Store, Tuskegee, Alabama, stated that he had a letter from the Southern Koke Company threatening him if he sold Coca-Cola for "Dope" and "Koke" in response to calls for "dope" and "koke," they were liable to prosecute. So he, Mr. Howard, asked some of his customers what they meant by "Dope" and "Koke" and each one replied that they meant Coca-Cola only, so Mr. Howard stated that he would continue to serve only Coca-Cola when "dope" and "koke" was asked for.

Mr. Jones, proprietor of William D. Jones' Drug Store, Jacksonville, Fla., stated that a representative of the Southern Koke Company had once called on him, and stated that it was about time he was lining up; that there was over two-thirds of the people in Jacksonville selling "Koke" syrup to-day for Coca-Cola, and people couldn't tell the difference.

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I interviewed Mr. J. H. Haughton, proprietor of the City Drug Company, Palatka, Fla., and he stated that a representative of the Southern Koke Company had called on him about two months previous and asked him why he, Haughton, in response to "dope" and "koke" calls didn't sell "Koke" syrup, and declared it was unfair competition to the company to sell Coca-Cola when "dope" and "koke" was called for, as the terms "dope" and "koke" was copyrighted; whereupon J. H. Haughton agreed to

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try the syrup and did so. Mr. Haughton handed me a card which is here "Number 94" attached to a bill for his order of Koke syrup from the Southern Koke Company at New Orleans, La., and said that he thought that it would be a violation of the law to sell Coca-Cola syrup when "dope" and "koke" was asked for, inasmuch as the Southern Dope & Koke Company had had the names "Koke" and "Dope" copyrighted. I saw in the card that they state that he would be liable to prosecution, and he didn't want to get in any law suit with anybody, he wanted to do a fair business and be fair to everybody. I said, "Is there any question in your mind, as to whether the names "dope" and "koke" are nicknames for Coca-Cola"? and he said that that had always been his understanding, that the names or terms "dope" and "koke" when applied to a fountain beverage meant only Coca-Cola; that since he received this information from the Southern Koke Company he was only using precaution against being sued; just then and just at that time a doctor there in town came in and said "Give me a dope" and I turned to Mr. Haughton and said "Mr. Haughton, just ask this man what he means when he asks for dope." So he said "What do you want Doctor, "dope" or "Coca-Cola"? "Why," he said, is there any difference? "Well," he said, "I just wanted to know what you mean." "Well," the Doctor says, "I mean "Coca-Cola," I thought everybody knew what "dope" meant." This Doctor was served and walked out, and just as he walked out, a man came in from the

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rear end of the store, came up to the fountain and he asked for a "koke," and I said "Ask him there, **you can verify for yourself** what the terms "dope" and "koke" mean when applied to a soda-fountain beverage in connection with a fountain beverage"; he walked over and asked this man to repeat it and the man says "Koke"; "well," he says, "koke" or "Coca-Cola." The man said "What"? Mr. [409] Haughton said "Koke" or "Coca-Cola"? The man said I have been drinking at this fountain three years, and I might use nicknames but I never knew there was any difference between the Coca-Cola and "koke" and "dope." I sometimes say "koke" and I sometimes say "dope" but I always want "Coca-Cola." Then Mr. Haughton came back to me and said he was thoroughly convinced that the names "koke" and "dope" were only nicknames for Coca-Cola and said that he would take the "dope" or "koke" syrup that he had in the container and sell only in response to calls for "dope" and "koke" Coca-Cola syrup. I heard that entire conversation.

Mr. J. J. Gerrig, of Gerrig's Drug Store, Ocala, Fla., stated that Mr. J. C. Mayfield called on him and got sore because he wouldn't sell "Koke" syrup, so he told Mr. Mayfield that when he got ready to sell a substitute for Coca-Cola that he wouldn't buy from a manufacturer, but that he would manufacture his own substitute which he thought was as good, if not superior, to Mayfield's product. He said he had always sold Coca-Cola syrup and for that reason thought he had the best Coca-Cola trade in town.

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Mr. Leroy Cotter, proprietor of Cotter's Pharmacy, Tampa, Fla., stated that a Southern Koke Company representative had once called on him and tried to sell him a product manufactured by the Southern Koke & Dope Company, with the statement that the product could easily be sold for Coca-Cola. Mr. Cotter said he dismissed him and never wasted any time with a substitute representative.

Cross-examination by Mr. LITTLETON.

Yes, sir, I was with the Pinkerton National Detective Agency before being employed by the Coca-Cola Company. Yes, sir, I was a detective with that concern and am now in the employ of the Coca-Cola Company. I was not in the employ of the Pinkerton National Detective Agency immediately prior to my employment by the Coca-Cola Company because I was out for some time doing nothing. The reason why I quit the Pinkerton Company was because it was matter of lay off with me, work was slack, so they told me, during the summer months, that it was necessary for me to take a vacation, and, as the vacation was without pay, I decided to look for a new position. [410] In all the rounds I have made, and in all the "Coca-Cola" advertising I have seen, and in all the containers of "Coca-Cola" I have seen, I have never seen a single instance where the names "Dope" or "Koke" were used or employed in "Coca-Cola" advertising, or on "Coca-Cola" receptacles. I might state here that a man called up from the country somewhere and said to a bottler "send me down 25 cases of "dope"—the bottler would say, "I haven't

(Deposition of Thomas Leslie Boswell.)

got any "dope" "Well," the man would say, "I mean 'Coca-Cola.'" "Well," the bottler would say, "then so state it." The Coca-Cola Company would answer him and state that it didn't have any "dope" that it made "Coca-Cola" and would ask him what he wanted. One man at West Point, Miss., wrote a [411] letter saying, "send me down a dozen cases of 'dope.'" The company wrote him a letter asking what he wanted, what he meant by "dope" and he said "Coca-Cola."

Well, I don't know that I ever have in all my rounds run across any of the other cola or caffeine—containing beverages, I never saw any that I know of except "Dope" and "Koke"—the Southern Koke Company's "Koke." I saw and tasted some of them at Houghton's place down in Lake City, Fla. To me it looked like "Coca-Cola" and tasted a great deal like it. In my rounds I ran across a great many nicknames for "Coca-Cola," such as Dope and Koke, "give me a shot," "give me a shot in the arm," "give me a pill," "a dose of lead," "a little cocaine," "coffin varnish," "embalming fluid," "Candler's high-ball," "give me a Candler cocktail," "a brick in the Candler building," "put a brick in the Candler building," etc. In the various places I went to, the way I knew that it was "Coca-Cola" that was being dispensed and not some other drink was by the fact that the container was usually labeled "Coca-Cola" and I would often ask if it was "Coca-Cola" and they would tell me "Yes." The only way I can recognize "Coca-Cola" when a man gives it

(Deposition of Thomas Leslie Boswell.)

to me is by the color. Well, I am not a chemist; I can't analyze it and could not tell whether it is "Coca-Cola" or not except by what they tell me. No, sir, I was not given a list of customers to see before I started on this trip,—not even a list of the towns. I was just told to go wherever I wanted to,—I mean, to start out somewhere and meet somebody and get a list—I never got a list from here. You say that by a strange coincidence I met only "Coca-Cola" dealers; well, I just went into a town and if I wanted a "Coca-Cola" I would go to a fountain and call for a drink—that's the place I would investigate. We would not know who was in that town,—I didn't—not even the bottler of "Coca-Cola"—I would just go in and buy a drink wherever I wanted to. You ask if every fountain I went to was not a "Coca-Cola" fount; well, I never went to a fountain in my life that they didn't sell "Coca-Cola," except the one here in Mississippi who said he only sold "Koke." The way I know they only sold "Coca-Cola" at the fountains which I have been going to all my life is because in response to "Coca-Cola" they always served that [412] drink,—that is, it was either "Coca-Cola" or something that looked and tasted so much like it that I couldn't tell the difference.

Redirect Examination by Mr. HIRSCH.

You ask what I mean by "Coca-Cola" fount, and if I ever went to a fountain that was named a "Coca-Cola fount"; no, sir, I didn't exactly mean a "Coca-Cola fountain," I mean a fountain, a soda-fountain.

(Deposition of Thomas Leslie Boswell.)

No, sir, no place or town or store was selected for me by anybody. I went to every one I mentioned of my own free will. I selected the places and picked them out. On the "Coca-Cola" advertising which I saw the name "Coca-Cola" was on it, yes, sir. It was produced in script like the name "Coca-Cola" is produced there (indicating Plaintiff's Exhibit #95). No, sir, I never did see "Coca-Cola" in any other script except that, anywhere.

**Deposition of Charles Howard Candler, for Plaintiff
(Recalled).**

CHARLES HOWARD CANDLER (Recalled).

Cross-examination (Resumed) by Mr. LITTLE-
TON.

Yes, sir; I was on the stand yesterday. I herewith file as Exhibit #88 the label that we use on the barrels and kegs of "Coca-Cola." We are not using Exhibit #88 now. It was used until last fall, when the net weight law went into effect. Since then we have been using the labels filed as Plaintiff's Exhibit #89. These labels are placed on barrels and kegs containing "Coca-Cola" and sent broadcast all over the country. The border around these labels purports to be a picture of coca leaves and cola nuts. Why, sure, we use "Merchandise No. 5," still. Our company has issued quite a number of advertising booklets, and we issued one soon after the trial of the case in Chattanooga of the U. S. Against 40 Barrels and 20 Kegs of Coca-Cola." No, sir, I don't know that it is true that we found in our business that

(Deposition of Charles Howard Candler.)

the impression was broadcast that "Coca-Cola" had cocaine in it and that that was why we issued this booklet, stating that it had no cocaine in it. No, sir, I do not know that a large number of people had the idea that "Coca-Cola" had cocaine in it.

"XQ . 18. Well, if they didn't have an idea that 'Coca-Cola' had cocaine in it, why did you want to state that?"

(Mr. HIRSCH.—"Of course, we are objecting to all this line of cross-examination.") [413]

"A. I suppose it had been charged or supposed by certain individuals that 'Coca-Cola' had cocaine in it, is the reason they printed the denial of the allegation." Yes, sir; I testified in the case at Chattanooga referred to above and in answer to a question there I stated in substance: "We would buy the whole leaf (meaning the coca leaf) in bales and grind it in a mill; we would also buy cola nuts and mix them—I have forgotten the proportion, it has been so long—in percolators, first mixing it up in what we call a wooden bog, wetted that down with a certain quantity—just a crude box for packing,—and added a certain quantity of phosphate of lime, and after they were thoroughly wetted, pack them in the percolator, so called *magma* (?) and let them stand possibly 24 hours, and then we would put on them diluted alcohol to which the white or a white California wine had been added—the exact proportion I have forgotten—and let it run out to a stated quantity, in other words a reservoir under them, and when the quantity we had figured on making was run

(Deposition of Charles Howard Candler.)

out, we would stop the process." I stated in answer to that same question in Chattanooga that I did not know whether or not, under the process just detailed, there would be any cocaine in the extract so derived from the coca leaves, and I don't know now. Yes, sir, the process just quoted above is the essential method by which we got the extract from the coca leaves prior to the time the Schaffer Alkaloid Works began to make this extract. Yes, I made it according to that method myself as manager of the company. I don't remember, sir, how long I made it according to that method. There are eight ingredients or groups of ingredients that enter into the mechanism of "Coca-Cola" syrup. One ingredient is burnt sugar coloring, or caramel; one is sugar, one is phosphoric acid, one is lime juice; one ingredient is caffeine and that is put in in the pure state; one consists of flavoring oils dissolved in alcohol. There are a number of flavoring oils in that extract—they are concentrated oils and have a strong flavor. In addition to that, we put glycerine into the syrup and a product which we call "Merchandise No. 5." You ask if "Merchandise No. 5" is not the product which has, or is supposed to have, this coca and cola, diluted or preserved with alcohol; I don't recognize it by the way you describe it. [414] We put in "Merchandise No. 5" as manufactured and furnished by Schaffer Alkaloid Works, but I don't know myself what is in this "Merchandise No. 5." I don't know whether it has any coca, or extract of coca leaves, in it, or whether it has any cocaine in it, except from

(Deposition of Charles Howard Candler.)

hearsay. I understand that the difference between the method by which Dr. Schaffer manufactured this "Merchandise No. 5" and got what extractive matter he did, if any, out of the coca leaves, and my method, is just a mechanical difference. I went through his laboratory and saw the difference in the mechanical method, or process, as compared to the one we pursued. We put water in "Coca-Cola," too, that makes nine ingredients. On the advice of counsel, I refuse to answer whether or not any ginger enters into "Coca-Cola." On the advice of counsel I refuse to answer whether or not these flavoring oils, or a number of them, which are put in "Coca-Cola" are derived from the peelings of the fruit from which they come. I am not a chemist and have never analyzed "Coca-Cola" syrup or "Merchandise No. 5." The "Coca-Cola" syrup which the Coca-Cola Company makes for the bottlers to be used in making the bottled "Coca-Cola" is different from the "Coca-Cola" syrup that is used for making the soda-fountain beverage.

Redirect Examination by Mr. HIRSCH.

Yes, sir; I have made up "Coca-Cola" with our regular ingredients in it, including "Merchandise No. 5," and without "Merchandise No. 5." I don't remember that I have ever tasted it to see if I could detect any difference in the flavor. Some years ago I sent Dr. Charles E. Caspari, at St. Louis, some with and some without. That was immediately before the trial of the case above referred to at Chattanooga. My information and observation is that

(Deposition of Charles Howard Candler.)

the difference between the process I used in making "Merchandise No. 5" and that which the Schaffer Alkaloid Works uses is simply a change of process. I have seen Schaffer manufacture "Merchandise No. 55" and have seen coca leaves and cola nuts go in it. Since I have been with the Coca-Cola Company there has never been any change in the formula of "Coca-Cola." The same formula is used now as was used when I commenced the manufacture of it. I also [415] sent some samples of "Coca-Cola," with and without "Merchandise No. 5" in them, to Dr. Wesner, living at Chicago. Yes, sir, in manufacturing "Merchandise No. 5" I used an extract of coca leaves and cola nuts, and so far as I know Dr. Schaffer uses an extract of coca leaves and cola nuts in making "Merchandise No. 5." I have been to Maywood, N. J., and have seen Dr. Schaffer's process and saw them using the coca leaves and cola nuts. I saw "Merchandise No. 5" manufactured, saw the ingredients go into it, and coca leaves and cola nuts were used. We use "Merchandise No. 5" in every batch of "Coca-Cola" we make, as received from the Schaffer Alkaloid Works, without change. There has been no change in the "Coca-Cola" formula since the case at Chattanooga. It is the same now as it was then. The difference between the bottled syrup and the soda-fountain syrup is that the former is a heavier syrup, more sugar being used in the manufacture of the bottlers' formula than in the fountain formula; also, a large quantity of coloring, and a relatively larger *quality* of caffeine.

(Deposition of Charles Howard Candler.)

The percentage of caffeine is practically the same, based on the quantity of sugar. I do not just now recall the percentage. In every other manner they are essentially the same. We make this difference in order to have as near a uniform product to dispense both in bottles and at soda-fountains as possible, due to the fact that bottlers use more water in the carbonation of their goods than soda-fountain dispensers do. Yes, sir, I heard Dr. Crampton testify at Chattanooga in the trial referred to, but it is vague in my mind as to what percentage of cocaine he said he found in "Coca-Cola" when he analyzed it, because he was on the stand a very short time. My recollection is he stated there was a trace of cocaine in the sample he examined some years ago. I think he was required to enumerate the tests he had used to find whether it was cocaine or not.

Recross-examination by Mr. LITTLETON.

Yes, sir; this process I described a while ago, which I used in making the extract from the coca leaves, the process that was described, that's all I did to get this extract out—that's all I did to it before I put it into the syrup. If the record in the Chattanooga case above referred to shows that I testified that I saw coca leaves [416] and cola nuts undergoing treatment at the Schaffer Alkaloid Works, but that I didn't see those leaves or those nuts actually put into "Merchandise No. 5," the record is wrong. The Schaffer Alkaloid Works treated the leaves and the nuts—according to Dr. Schaffer, who was with me on this visit,—in their process which turned out

(Deposition of Charles Howard Candler.)

“Merchandise No. 5.” He showed me the various steps in the process as it went forward, which process resulted in the end in “Merchandise No. 5.” The whole thing was connected as a laboratory process would be. I think Dr. Schaffer told me that all the cocaine was extracted from the coca leaves. Not all of the other alkaloids were extracted that I know of. No, sir, the associated alkaloids in the coca leaves were not extracted along with the cocaine—not that I know of. The fact of the business is, I don’t know whether they were or not, and I don’t know what properties of the coca leaves were put into “Merchandise No. 5.” I don’t know whether or not any properties of the coca leaves, or any chemical or physiological properties thereof entered into the composition of “Merchandise No. 5.” Mr. Hirsch admitted that all cocaine and associated alkaloids are extracted from “Merchandise No. 5.” The Schaffer Alkaloid Works are manufacturers of cocaine. (Mr. HIRSCH—“We admit, for the purpose of this record, that they are large manufacturers of cocaine. I am not certain that they are the largest in the United States, but I think they are, that is my impression.”) Presumably Dr. Schaffer takes the cocaine which he extracts from the coca leaf in this process of making “Merchandise No. 5” and sells it on the market as cocaine. I don’t know of any treatment which he gave the cola-nuts. My recollection is he just ground them up and put them in there.

(Deposition of Charles Howard Candler.)

Re-redirect Examination by Mr. HIRSCH.

Plaintiff's Exhibit #90 is one of the books that was gotten out by the Coca-Cola Company immediately after the trial of the case of the United States against forty barrels and two kegs of "Coca-Cola" at Chattanooga, above referred to. Plaintiff's Exhibits #91 and #92 are others of such booklets. So far as I know the facts stated therein are true. My object in treating the coca leaves, before Dr. Schaffer commenced manufacturing them, was to obtain "Merchandise No. 5." I treated the coca leaves in the manner heretofore stated in order to obtain [417] "Merchandise No. 5."

Deposition of Nick D. Chotas, for Plaintiff.

NICK D. CHOTAS.

Direct Examination by Mr. ROGERS.

I am in the cigar and soda-water business, corner of Houston and Ivy Streets, Atlanta, Ga., and have been in that business about six years. I have dispensed, during all of that time, soda water and "Coca-Cola." Candler is the maker of "Cola-Cola." Sure, I have heard of the Coca-Cola Company. Yes, sir, when I speak of "Coca Cola" I mean the drink that is advertised all around. I have known "Coca-Cola" about ten years. Yes, sir; I am around the *around the* fountain and hear people ask for the drinks they want. I work behind the fountains most all the time. Sure, I know the names people use when they ask for any particular drink which they wish. Lots of them say "dope," lots of them says

(Deposition of Nick D. Chotas.)

“Coca-Cola.” Yes, sir; when a man asks for “dope” I give him “Coca-Cola.” No, “Coca-Cola” has never been refused by anyone who asked for “dope” on the ground that it wasn’t what he wanted.

Q. 17. How long have you heard the word Dope used as a nickname for Coca-Cola? A. I have heard it used ever since I have been behind the fountain, about nine years now. I get my “Coca-Cola” syrup in red kegs. No, sir, I never saw a “Coca-Cola” keg or barrel that wasn’t red. If I saw a pile of red kegs on the sidewalk in front of some place where there was a soda-fountain I would think they were “Coca-Cola” barrels. No, sir; if I should order a “Coca-Cola” to be served to me and the dispenser should serve me a drink of a golden yellow color I would not think I was getting “Coca-Cola.” No, sir, I have never seen the named “Coca-Cola” printed in advertisements or on labels in any way except the script style.

Cross-examination by Mr. LITTLETON.

The other drinks I dispense at my soda-fountain, besides “Coca-Cola,” are chocolate milk, cherry phosphate, Hires’ Root Beer, cream soda, etc. I do not dispense sarsaparilla, “Moxie” or birch-beer. The color of the root beer which I dispense is black—well, sort of like “Coca-Cola” only it is very dark color, sort of like “Coca-Cola” only it is very dark golden color. Hires’ Root Beer is more like “Coca-Cola,” more the color of “Coca-Cola.” Well, I don’t know whether or it it would be very hard, or in fact impossible, unless [418] you made a very

(Deposition of Nick D. Chotas.)

careful examination of the two colors together, to tell whether a drink was "Coca-Cola" or Hires' Root Beer—by the color you can't, but the root beer when you dispense it from the soda-fountain has a very heavy foam and "Coca-Cola" has not. I have seen foam on "Coca-Cola," but it is not that thick. No, sir, I have never seen the wagon of Hagan & Dodd Company—the "Ko-Nut" people—going around town. I have been in Atlanta about ten years and during that time I have never seen any wagons with the name of Hagan & Dodd on them, or the name "Ko-Nut" or "Afri-Cola" on the barrels. I have seen "Ko-Nut" wagons, with the "Ko-Nut" on them. The way I know they were "Ko-Nut" wagons, I just noticed the sign up there, sometimes I am looking to buy ginger-ale, I have seen them pass and I seen him and may be think he was ginger-ale, and I see on the wagon "Ko-Nut," "Lemo-Lime" and things like that, that is the only thing I notice. No, sir; I never have seen any of their barrels or kegs, nor have I seen the drink "Ko-Nut," or the syrup from which it was made. Yes, sir; I have seen bottles of "Ko-Nut." I did not see them up close—just seen them pass by the street there. I wouldn't never know a barrel if I was to see it. No, sir; I have never seen any "Wise-Ola," "Ala-Cola" "My-Coca" or "Ameri-Cola," but I have seen "Chero-Cola." The color of that is—well I don't know, it is flat looking stuff. It was sort of dull black. No, sir it was not about the same color as

(Deposition of Nick D. Chotas.)

"Coca-Cola," it was all black, flat looking stuff. I am 23 years old and I am a Greek. I have been in this country about ten years.

Deposition of F. M. Green, for Plaintiff.

F. M. GREEN.

Direct Examination by Mr. ROGERS.

I am in the drug business at the corner of Forsyth and Luckie Sts., Atlanta, Ga. I have been there almost two years. Before that I was in the drug business at Ellwood, Indiana, for 20 years. I have had a soda-fountain continually all the time. Among the drinks I have served at the soda-fountain are limeade, ice cream soda, chocolate milk, "Coca-Cola," mentho-peps. The Chandler Company of Atlanta, Ga.—the Coca-Cola Company,—makes "Coca-Cola." [419] Yes, sir, that is the drink which is generally advertised all around. I have handled it about 16 or 18 years, I think, both at Atlanta and at Ellwood, Ind. I hear people ask for pretty near every drink; I didn't at Ellwood, Ind., so much. Yes, sir. I sometimes wait on the fountain. Yes, sir, I can say that I am familiar with the names used in ordering drinks there. When they want "Coca-Cola" I have heard them say three or four different things—"Candler's Highball," "dope," "Coca-Cola," "koke." "Q. 21. What do you dispense when they ask for 'koke' or 'dope' or 'Candler's Highball'?" "A. I never carry anything in there but 'Coca-Cola.'" You ask what the purchaser means by "koke," "dope" or "Candler's

(Deposition of F. M. Green.)

Highball"; well, if you have a new boy and he don't know the name he will come back at them and say, "Coca-Cola?" I have heard "koke," "dope," and "Candler's Highball" for 15 or 16 years at the fountain as meaning that one thing only, namely, "Coca-Cola." Yes, sir; that was true also at Ellwood, Ind. When a man asked for "koke" or "dope" up there he got "Coca-Cola." No, I have never heard anybody say that "Coca-Cola" wasn't what he wanted when I served "Coca-Cola" to him in response to a request for "dope" or "koke." I get my "Coca-Cola" in red kegs. I have never seen a "Coca-Cola" barrel or keg that wasn't red. If I should see a dray coming along down the street with red barrels and kegs on it I would think it was "Coca-Cola" right away. If I should call up the Coca-Cola Company over the telephone and order a keg of "Coca-Cola" and presently a delivery wagon would come around and deposit on my sidewalk a white keg my conclusion would be that it had not delivered what I had called for, or else that they had failed to paint the keg. If I should attempt to sell to customers at my fountain asking for "Coca-Cola," "dope," or "koke," a drink that was light yellow in color I do not think I could do it; they would know immediately that it wasn't "Coca-Cola,"—what they had been used to getting. You ask what there is about "Coca-Cola" as it is dispensed at the fountain, in the glass, that is distinct, if anything; well, the color. Yes, sir; I think I can tell a glass of "Coca-

(Deposition of F. M. Green.)

Cola" when I see it. Yes, sir, I am familiar with the "Coca-Cola" advertisements. [420] Well, I think it has been the most highly advertised drink in the world. As to whether or not I have noticed any particular form in which the word "Coca-Cola" has been printed in these advertisements, I would say that I noticed the coloring and the sort of scroll "C's"—yes, sir; the script. No, sir; I never did see a "Coca-Cola" advertisement that was not in that form.

Cross-examination by Mr. LITTLETON.

During the 22 years I have been in the soda-water business, as clerk and proprietor, I have dispensed from the soda-fountain root beer and sarsaparilla. Root beer is a brownish red color,—well, I would say more of a brown. I would not say an amber brown, or anything of that kind, I would say a distinct brown color. As dispensed at soda-fountains I can tell the difference at once between "Coca-Cola" and root beer by their color—that is if it is genuine Hires' Root Beer. I am figuring on that, because it is the one advertised. If a man was to make up his own then he might get the color identical with "Coca-Cola," but a standard brand, I am figuring on, is darker than "Coca-Cola." I don't know how long I have been handling Hires' Root Beer, but it has been ten or twelve years, though, any way. Yes, sir; we handled root beer before that, the one that we made ourselves. Well, the color of it varied. The color of the sarsaparilla we handled was a brown color. No, there was no red in it at all, we just used

(Deposition of F. M. Green.)

caramel coloring to make the brown, and nothing else. The color of "Coca-Cola" is an amber brown, not as deep a brown as the other. No, the three drinks, "Coca-Cola," sarsaparilla and root beer, as dispensed to the public at soda-fountains, are not practically the same color,—root beer is dark. As to sarsaparilla it depends very much on who makes it. No, I have never seen any soda-fountain beverage at all, dispensed from the soda-fountain, of substantially the same color as "Coca-Cola," or so close to the color thereof that I couldn't distinguish it readily at a glance. Yes, sir, I could distinguish every other drink that I have seen in a soda-fountain readily at a glance—that is, distinguish it's color. Yes, sir, I could tell the difference between Hire's Root Beer and "Coca-Cola" at a glance, and I could tell the difference between [421] the root beer which we made before Hires' Root Beer came out, and "Coca-Cola," absolutely, at a glance. I have seen "Moxie" and that is a deep brown color. "Moxie" is a deeper brown than "Coca-Cola." Yes, sir, it is along the same kind of color, it is a shade of brown. Root beer and sarsaparilla are colored with caramel. I remember seeing sarsaparilla on the fount ever since I was a small boy. I am now 42 years of age. I have seen it since I was about ten years old anyway—that is to say, I have seen it on the market for 32 years and it has been substantially the same color during all of that time that it is to-day, but it varies with whoever makes it. Hires' is always standard color, there is no difference. I have seen "Moxie" on the market

(Deposition of F. M. Green.)

about 1888. Yes, sir, I dispensed ginger-ale at my soda-fountain. I don't know whether that is colored with caramel or not. Yes, sir; I have made sarsaparilla and root beer myself way back there years ago, and I used caramel to color it. Yes, sir, caramel was used at that time almost universally as a coloring matter for drinks that they wanted to color a brown color. That is the only thing they could color them with and get by with it. I mean by that, that caramel wouldn't make a precipitate and thing of that kind. Other coloring matter would make a muddy precipitate.

No, sir; I have never handled any other drink at my soda-fountain that tasted anything like "Coca-Cola." I have been a customer of the Coca-Cola Company of Atlanta, Ga., ever since I first began to handle that stuff. No, sir; I do not know the Hagan & Dodd Company here. I see a drink "Ko-Nut" advertised on the wagons around town and I see it out at the ball games. I have never seen any "Afri-Cola," but I have seen it advertised in The "Western Druggist," a magazine published in Chicago. I know of a number of drinks on the market to-day of substantially the same color, taste and appearance as "Coca-Cola." They are all aping "Coca-Cola"—that is they are all trying to get the brown color out of it and something to look like "Coca-Cola" as near as possible. I have had people trying to sell me imitations of "Coca-Cola" at the price of a dollar a gallon, but I never bought any of it. They want me to serve it for coca-cola because it would be cheaper.

(Deposition of F. M. Green.)

[422] No, I don't know how many such drinks there are on the market. There might be a dozen. I don't know. Oh, I guess when the boys step out, something of that kind, I want on the soda-fountain, nothing like a regular thing, just to accommodate the boy or something of that kind, when he steps out. No, I don't know the reason why people use the word "dope" when they want "Coca-Cola," I never knew the origin of it. None of my customers during all the time I have been in business ever intimated to me the reason why they use the word "dope." I really wouldn't know why they use it, just simply it is a slang phrase for it. "Dope" means the influence of some drug to deaden the senses, or something of that sort. Yes, sir, "a dope fiend" is frequently used with reference to a cocaine fiend—that, and morphine as well.

Redirect Examination by Mr. ROGERS.

When I talk about "dope on the horse races" that hasn't anything to do with morphine or opiates. No, if some one were talking about the "dope on the baseball game" that would not have anything to do with opiates or morphine or anything of that sort. No, sir, if a man should ask me what the "dope" is on a certain thing I would not understand that he had reference to narcotics; it's information he is after then. If a man goes to a soda-fountain and asks for "dope" he don't mean that he wants to be put to sleep, or anything of that kind, he means that he wants "Coca-Cola." Yes, sir; "dope" in that connection, as applied to a soft drink, is a slang phrase

(Deposition of F. M. Green.)

for "Coca-Cola." When a man comes to my soda-fountain and asks for a "Candler Highball" I give him a "Coca-Cola." I have no reason to suspect that is not what he wants. The first time I heard the word "dope" my father made a trip here to Atlanta during the Exposition, somewhere around 1895 or 1896, and came back telling about a drink they had at a drug-store in Atlanta, like Benjamin's Pharmacy, which they called "Dope" and sold at the soda-fountain. We have never served anything but "Coca-Cola," always. Yes, sir, when a purchaser asks for "dope" always give him "Coca-Cola." No, sir, I have never had anybody to refuse it on the ground that it was not what was wanted. [423] It has been about 17 years since I first heard the word "dope" used in such connection as "the 'dope' on race horses," or "the 'dope' on base ball games," etc.—when I was a baseball fiend, I could not count the years back, but I have been a fiend on baseball ever since that time. I could not say whether the use of "dope" in that connection came out in the year 1905,—I don't know.

Deposition of George Alfred Harbour, for Plaintiff.

GEORGE ALFRED HARBOUR.

Direct Examination by Mr. ROGERS.

I live at 340 Ponce De Leon Avenue, Atlanta, Ga. I am the proprietor of Harbour's Smoke House and I have a soda-fountain, which I have been conducting for about five years. Yes, sir, I dispense "Coca-Cola" at my fountain. The Coca-Cola Company of

(Deposition of George Alfred Harbour.)

Atlanta makes "Coca-Cola." Yes, sir; I mean by "Coca-Cola" the drink that is so extensively advertised. We have lots of it down in our place of business, glasses, chandeliers and everything. Well, I can't remember the first drink I ever had of "Coca-Cola," I was a youngster then in Rome, my old home. I bought it on a free ticket. That must have been along in 1894, I imagine. Oh, yes, in my present place of business I am around the fountain and hear people ask for drinks and know the names they use. Well, almost six or eight people out of ten often ask for "Coca-Cola" under the name of "dope." Yes, sir; I recognize "dope" as a nickname for "Coca-Cola." Well, yes, they use other nicknames as well. They call it by everything under the sun, almost, some of them call it "shot," some of them call it "koke" and "dope" and "Candler's Highball,"—well, everything else. I believe if they were to come in and ask for a thing we didn't know what they were talking about, we would serve them "Coca-Cola." When a man comes to my soda-fountain and asks for a "dope" or a "koke" I understand him to mean "Coca-Cola" and "Coca-Cola" is what I serve. No, sir, I have never had anybody to refuse "Coca-Cola" as not being what they desired. I don't know that I ever called "Coca-Cola" by the names "koke" or "dope" before I got in business—I may have. Of course, I call for it now under that name myself and I suppose ever since I can remember I have known it as [424] "dope." However, I have noticed it more since I have been in business than I ever did

(Deposition of George Alfred Harbour.)

before, because I have been in closer contact with it now than I have ever been before. I get my "Coca-Cola" in red kegs. I have never seen a "Coca-Cola" keg that wasn't red. "Coca-Cola" kegs have an individuality about them that is easily distinguishable from any other drink, anything that I have ever bought, and when I see them setting out there on the street I know it is a "Coca-Cola" keg. The most conspicuous thing about them is a red keg—painted red; the other most noticeable thing, if you are close to it, is the label on the end, the same label that is used on all of them I ever saw. No, sir, I cannot serve to my customers asking for "Coca-Cola," either by it's name, or by any of its nicknames, a golden yellow beverage because they would know it was not "Coca-Cola" by its color. I believe I could recognize "Coca-Cola" by it's color. I know that all I ever saw had the same color, a brownish red color. Yes, sir, I can tell it by the taste.

Cross-examination by Mr. LITTLETON.

I moved to Atlanta, from Rome, Ga., in 1900, and have been in the soda-water business 5½ years. I have never seen the drink "Ko-Nut" or "Afri-Cola" that I know of. Well, yes, I have seen other drinks on the market similar to "Coca-Cola" in color; you might say Hires' Root Beer is similar to a certain extent in color, but there is something about it that you can tell it isn't "Coca-Cola." I don't know whether the color of Hires' Root Beer and of "Coca-Cola" is so nearly alike that the ordinary person couldn't tell the difference readily at a glance. These

(Deposition of George Alfred Harbour.)

Atlanta people have got "Coca-Cola" down so fine I believe they would know it in the dark. I don't know about the people out of Atlanta because I have never had any dealings with them at all. I have never traveled much further than Decatur. I don't know that we ever bought any root beer outside of Atlanta, and I don't think I ever drank any until I came here, or that I ever saw any before then. I used sarsaparilla before I came to Atlanta. I lived in North Rome and the great thing out there was bottled drinks, and, of course, they had sarsaparilla like all other drinks in bottles at that time. The [425] *The* color of sarsaparilla at that time was a dark muddy looking color, That was too long ago for me to remember very much about it, I never paid very much attention to the color at all—I don't suppose it made very much difference to me then. . Occasionally I see a poster advertising other drinks similar to "Coca-Cola" around in various places. I know that I have noticed them in going down to the "Coca-Cola Company at times—I go down there to pay my bills and I noticed right across the street from them they have a sign "Arrow-Cola,"—I believe I have noticed that up on the building. I have never seen the drink. I don't remember ever seeing any other barrels painted just the color of "Coca-Cola" kegs. Oh, yes, I have seen the Standard Oil Company's barrels; most of them are painted blue, I believe. I have never seen any of them painted red that I know of. No, I haven't observed barrels very much and I am not a great drinker, so barrel stuff never did appeal to me

(Deposition of I. L. James.)

very much. I never did notice the barrels very much, Standard Oil or other beverages. No, I don't know the Standard Oil beverage.

Deposition of I. L. James, for Plaintiff.

I. L. JAMES.

Direct Examination by Mr. HIRSCH.

I am in the drug business at 247 West Peachtree Street and 141 Peachtree St. I have lived in Atlanta, I guess, about 10 or 12 years. Yes, sir; I have soda-water stands in my drug-stores. Some of the drinks we dispense at our stand are: "Coca-Cola," lemon-lime-lithia, lemon and lime, cherry phosphate, ice-cream soda. "Coca-Cola" is made in Atlanta by the Coca-Cola Company. Yes, sir; that is the drink advertised extensively all over the country and in Atlanta. I guess I have known this drink "Coca-Cola" about 17 years. Oh, yes; I observe customers coming in calling for drinks. I have heard them come in and ask for "Coca-Cola" by asking for "dope" and "koke" and different things. When they ask for "dope" and "koke" I give them "Coca-Cola." Yes, sir, I understand "dope" and "koke" to be a nickname for "Coca-Cola." I am familiar with the barrels and kegs that "Coca-Cola" is shipped in. Their color is red. No, if I should order "Coca-Cola" and a white barrel should be shipped to my place I [426] would not think it was "Coca-Cola." No, if I should order a "Coca-Cola" at a soda-fountain and they should give me a yellow drink I would not think it was "Coca-Cola."

(Deposition of I. L. James.)

Why, I guess I have heard the names “koke” and “dope” as nicknames for “Coca-Cola” about five or six years, perhaps.

Cross-examination by Mr. LITTLETON.

No, sir; I have never handled any other cola or caffeine containing beverage except “Coca-Cola.” No, sir, if I were to see a drink of a golden yellow served at a soda-fountain I would not think it was root beer, nor would I think it was sarsaparilla. I would not know what it was. I might presume it to be ginger-ale—that is about the only real light golden colored drink that I know of that is dispensed. I presume I have seen the delivery wagon of Hagan & Dodd going around in Atlanta, but I can’t say that I have seen any barrels on it, if I have I don’t remember. You ask what other drinks are on the market that are similar to “Coca-Cola” in color; well, root beer resembles “Coca-Cola,” foams a little more, and sarsaparilla—of course, sarsaparilla and root beer are similar. I believe that is about all. I don’t know that I have ever seen “Ko-Nut,” “Afri-Cola,” or “Ala-Cola.” If I ever did I didn’t know it. The first person who saw me about being a witness in this case was some gentleman who came and asked me would I come up and give my testimony. Magnus L. Ramey is his name. I have been in the drug business nearly 17 years. Yes, sir, I have made root beer myself. Why, we colored it with burnt sugar—caramel—if we colored it at all. Yes, sir; that material has been in universal use for coloring beverages, and we have used it to color vanilla flavoring. Well,

(Deposition of I. L. James.)

I don't know what is the difference in color between a glass of root beer or sarsaparilla as served at a soda-fountain and a glass of "Coca-Cola." "Coca-Cola" might be a shade lighter, I don't know. Yes, sir, it is very hard to tell the difference. No, I don't think the ordinary customer coming in, if he saw a glass of one and a glass of the other setting on the counter, could tell the difference between them.
[427]

Redirect Examination by Mr. HIRSCH.

No, sir, I could not sell either root beer or sarsaparilla for "Coca-Cola."

Recross-examination by Mr. LITTLETON.

No, sir, I don't think I could sell "Ko-Nut" or "Ala-Cola" successfully for "Coca-Cola" because it doesn't taste the same, it isn't the same flavor and it hasn't the same palatability. You ask if I could sell "Koke" for "Coca-Cola"; I don't know what "Koke" is—I shouldn't think so—well, I really couldn't tell. If a man asks for "dope" why we give him "Coca-Cola." Well, I don't know whether we could serve the drink known as "Dope" for "Coca-Cola" or not.

Redirect Examination by Mr. HIRSCH.

I can't say that I have ever heard of the drink "Dope" as an individual drink; I have just heard them come in and say give me a "dope." In times gone by I have had the same thing about "koke"—I never had anything like the calls for "koke," though, that I have had for "dope." I can't say that

(Deposition of I. L. James.)

I have ever seen a drink advertised under the name of "Koke" or "Dope." When a man asks for "koke" or "dope" I understand he means "Coca-Cola."

Re-recross-examination by Mr. LITTLETON.

No, sir; I have never seen either the word "Dope" or the word "Koke" applied to any receptacles, packages, advertising, literature or in any other way, written or printed, or affixed to, or connected with this "Coca-Cola" product, or any of it's containers or advertising.

Deposition of Alexander Cruickshank, for Plaintiff.

ALEXANDER CRUICKSHANK.

Direct Examination by Mr. ROGERS.

I am in the cigar and soda-water business in Atlanta, Ga. I have five stores, the principal of which is located at 141 Peachtree St. I dispense soft drinks at only four of them. I have been in business 14 years, but have only been in the soda-water business for eleven years. We sell a general line of soda-water drinks. Yes, sir, we dispense "Coca-Cola." The Coca-Cola Company, of Atlanta, is the maker of "Coca-Cola." Yes, sir; I have seen "Coca-Cola" advertising. [428] The conspicuous feature of it is the trademark. By that I mean the script, yes, sir, and the name "Coca-Cola." I have known "Coca-Cola" ever since I have been in Atlanta, about 17 years. Yes, sir, I am around the fountains in my various stores, and have been, and hear people asking for drinks myself. Yes, sir; I have heard them ask

(Deposition of Alexander Cruickshank.)

for "Coca-Cola." They use a number of nicknames in asking for it. "Dope" is the principal one, I think. Yes, sir; I heard the word "koke." When a man asks for "koke" and "dope" I understand that he wants "Coca-Cola." Yes, sir; I regard the names "koke" and "dope" as familiarly used nicknames for "Coca-Cola." No, sir, when I dispense "Coca-Cola" in response to requests for "dope" and "koke" I have never had a purchaser say that wasn't what he wanted. Oh, I couldn't tell you positively how long these nicknames have been used; to my certain knowledge they have been used at least eight years. They are very commonly used to the extent, I should judge, that sixty per cent of the people that drink "Coca-Cola" call it by a nickname of some kind or other—"Candler's cocktail." "brick from the Candler building," "Candler's highball," "dope," and "koke." No, sir; I have never had any doubt about what they mean when they use such expressions, and the dispensers haven't. I get my "Coca-Cola" syrup in red kegs. I can mighty near tell a "Coca-Cola" keg when I see it. I can sight one on the wagon; I know it is "Coca-Cola." The thing about a "Coca-Cola" keg that indicates to me that it is a "Coca-Cola" keg, is the color of the keg.

Cross-examination by Mr. LITTLETON.

You ask if a fellow should come up to a soda-fountain and ask for something he wanted by means of a slang phrase which I hadn't heard before, if I wouldn't think he wanted "Coca-Cola"; well, I don't know about that. If he would come in and say

(Deposition of Alexander Cruickshank.)

“give me a brick in the Candler building” I would serve him a “Coca-Cola.” If he would say “give me a high-fly” I don’t know that I would serve him a “Coco-Cola.” I have never heard it called a “high-fly.” If he asked for “Candler’s Highball” I would give him “Coca-Cola.” No, if he would just say “give me a drink” I would not serve him a “Coca-Cola.” I would ask him what [429] he wanted. The other drinks we serve at our fountain are lemon and lime, vanilla soda, lemon soda, grape juice, phosphates of various kinds, orange-ade, chocolate, root beer, etc. We do not dispense sarsaparilla. Yes, “Moxie” is a soda-fountain beverage, but not in this part of the world. That is sold up East. I remember getting a drink in Central Park in New York at one time, and it made me sick, and I have never wanted any more since then.

Deposition of Charles Kingsbury, for Plaintiff.

CHARLES KINGSBURY.

Direct Examination by Mr. HIRSCH.

I reside in Atlanta, Ga., where I have lived practically all of my life—31 years. I am in the cigar and soda-water business in the Granite Building, in which business I have been engaged since 1908—six years. We handle every kind of soda-water, ice-cream sodas, lemon, lime, lithia, buttermilk and sweet milk, and all such drinks as that, including “Coca-Cola.” “Coca-Cola” is manufactured in Atlanta by Asa G. Candler—The Coca-Cola Company. Yes, sir, that is the drink so extensively advertised. Yes, sir,

(Deposition of Charles Kingsbury.)

my place of business is so I can keep a constant look-out on my place of business—behind the fountain a good deal myself. “Dope” is the principal name that is used in calls at my fount for drinks, and “Candler’s highball” and “give me a brick in the Candler building”—all that kind of stuff. When people come into my place of business and call for “dope” and “koke,” I understand them to mean “Coca-Cola.” Ever since I have been in business they have been calling it by that way—about six years. I do not order “Coca-Cola” direct from the Coca-Cola Company; it comes from the Liquid Carbonic Company. Yes, sir; I see the “Coca-Cola” that comes to my place of business. It comes in ten-gallon red kegs. The way I distinguish a “Coca-Cola” keg is that it has a great big name on the end of it—“Coco-Cola.” No, I don’t know that I could distinguish it any other way, or that I could distinguish it by it’s color—only that I just know it when I see it. The reason why I know it when I see it is because it has “Coca-Cola” on it. “Q. 23. You know it when you see it by the color it has”? “A. By the color; yes, sir.” [430] “Q. 24. That is one of the ways?” “A. Yes, sir, that is one of the ways that I know it, and the name, another way.” If I should see in front of a soda-water stand a whole lot of barrels and kegs of red color, the first thing that would flash through my mind would be that it was “Coca-Cola.” Yes, sir; that would be so whether I saw the label or not, because they have been putting it out in red kegs ever since I have been getting it from them. If I

(Deposition of Charles Kingsbury.)

should go to a stand and call for "Coca-Cola" and a bright golden drink should be served to me I would not think it was "Coca-Cola." "Q. 29. Is that the way you distinguish it, by the color?" "A. Yes, sir."

Cross-examination by Mr. LITTLETON.

You ask if I know any other soda-fountain drinks of the same color as "Coca-Cola"; why "Coca-Cola" looks something like the color of root beer, I suppose, and sarsaparilla. I have never seen any "Moxie" or birch beer. "Grapeine" or "Brew." You say that if there is another drink about the same color, then "Coca-Cola" is not distinguished by its color; well, only "Coca-Cola" has got that color to it. Root beer and sarsaparilla are the only other drinks that I have ever seen that have that color—I have never seen a drink that has got that color. No, sir, I have never handled any "Ko-Nut" or "Afri-Cola" from any fountain. I have seen "Ko-Nut"—I used to drink it at the ball park when I couldn't get "Coca-Cola," years ago. The color of "Ko-Nut" is something like the color of "Coca-Cola." No, sir, it does not taste like "Coca-Cola," in my opinion; it has a similar appearance to "Coca-Cola"—I didn't think about that at the time you asked me about these other drinks—and has a taste that sort of resembles it, taste's just like a substitute. Yes, sir, it is pretty close to "Coca-Cola," but I think I could distinguish it. Oh, I don't know, "Ko-Nut" and "Coca-Nola" used to have wagons going around town, but I haven't noticed them lately. I don't know whether they send

(Deposition of Charles Kingsbury.)

their stuff around in barrels and kegs or not; I haven't noticed any; I haven't handled it. No, if I saw a drink sold at a soda-fountain that was a light golden color I would not think it was root beer. I think root beer is more of a black color,—looks something [431] like "Coca-Cola,"—I would not call it golden. If a light-colored drink like that was served to me I would not think it was sarsaparilla. I don't know what I would think a drink that was served to me of a light golden color was. I suppose gingerale is a light golden color,—that's the only one I can recollect at this time.

Deposition of F. H. Smith, for Plaintiff.

F. H. SMITH.

Direct Examination by Mr. ROGERS.

I am in the soda-water business at 18 E. Alabama St., and am the proprietor of the Smith Soda Water Company, Atlanta, Ga. I have been in the soda-water business three years and 31 days. We dispense "Coca-Cola" at our soda-fountain. I don't know how long I have known "Coca-Cola,"—it has been a long time ago, ten or twelve or fourteen years. Why, they tell me Mr. Candler makes "Coca-Cola." I get mine down here at the Coca-Cola Company. Yes, sir, by "Coca-Cola" I mean the product that is so extensively advertised. Oh, yes, sir, I am about the soda-fountain myself and hear people ask for the drinks they want, and serve them myself, and I have been doing that since 1907. Oh, yes, when people mean "Coca-Cola" they use nicknames and

(Deposition of Charles Kingsbury.)

slang terms, such as "dope" and "koke" and "Candler's whiskey," and "Candler's Highballs"—I don't know, most anything you can think of. When they ask for "dope" or "koke" I understand that they mean "Coca-Cola," and that is what I serve them. Half of the people in Atlanta will ask for "Coca-Cola" by the name of "dope"—"give me a dope," half of them will say, instead of "Coca-Cola." Yes, sir, I recognize the words "dope" and "koke" as commonly used nicknames for "Coca-Cola." Before I was a soda dispenser I was a "possum hunter. Oh, yes, I drank "Coca-Cola" then. I used to ask for it as "dope" and "koke"—everything else—it has been known as "dope" ever since I have known "Coca-Cola."

"Q. 22. And by 'dope,' a request for 'dope,' is understood to be a perfectly definite request for 'Coca-Cola,' isn't it?"—"A. It is, yes, sir; that's right." (This form of examination is objected to by defendants because decidedly leading, and the questions and answers are objected to for the same reason. Objection overruled. Exception.) [432]

Yes, sir; when people come in to my store and ask for "koke" or "dope" I serve them "Coca-Cola," and I have never had any of them object and say that that wasn't what they wanted. In my early days when I was a 'possum hunter, if I went into a store and asked for "koke" or "dope" and was served with something that wasn't "Coca-Cola," I knew I was not getting what I had asked for, but I took it because I couldn't get anything else. Oh, yes, I

(Deposition of Charles Kingsbury.)

considered I had something else substituted—"Rye-Ola" was frequently sold for "Coca-Cola,"—but when I asked for "dope" I meant "Coca-Cola."

Cross-examination by Mr. LITTLETON.

I mean by saying I was a possum hunter that I was a farmer and the biggest thing I done when I was a farmer was 'possum hunting—I was raised right on the edge of a big swamp and I lived in it most of the time.

Deposition of W. R. Millicon, for Plaintiff.

W. R. MILLICON.

Direct Examination by Mr. HIRSCH.

I am a soda-fountain dispenser at the Sterling Soda Water Company, Empire Building, Atlanta, and I have got a place of my own at 111 West Mitchell St. Yes, sir; I sell soda-water, most any kind of soda-water drinks, lemon, lime, cherry phosphate, root beer, etc. "Coca-Cola" is manufactured in Atlanta by the Coca-Cola Co. Yes, sir; that is the drink that is advertised generally around, that I refer to as "Coca-Cola." I have known "Coca-Cola" about ten or twelve years I reckon.

Cross-examination by Mr. LITTLETON.

I said I have been in the soda-water business about ten years.

Deposition of Dr. J. D. T. Lawrence, for Plaintiff.

Dr. J. D. T. LAWRENCE.

Direct Examination by Mr. HIRSCH.

My place of business is in the Equitable Bldg., 49

(Deposition of Dr. J. D. T. Lawrence.)

N. Pryor St., Atlanta, Ga., where I have a soda-fountain. The soda-fountain has been there for nearly ten years. [433] I had a partner with me originally. I have been there myself one year the first of August. I have been serving soft drinks to the public ever since I have been in business there, which is in the neighborhood of ten years. Yes, sir; we dispense "Coca-Cola." Mr. Candler makes "Coca-Cola,"—I believe they call it the Coca-Cola Company. I try to look after the soda-fountain since I run it myself. Yes, sir; sometimes I hear people come in and ask for drinks and hear what they say. Well, yes, sir; I hear them ask for "Coca-Cola." Yes, sir; they use other terms when they mean "Coca-Cola." "Dope," I think, is the biggest word they use. When a man asks for "dope" I give him "Coca-Cola"; I haven't got anything else to give him. I have never had a man reject it on the ground that it wasn't what he asked for. Well, I couldn't tell you how long "dope" has been a nickname for "Coca-Cola." Seems to me I have heard it ever since I have been selling "Coca-Cola"—six or seven years, anyhow. Yes, sir; when a man asks for "dope" at my soda-fountain I understand he means "Coca-Cola." Yes, sir; I regard the word "dope" as a nickname for "Coca-Cola."

Cross-examination by Mr. LITTLETON.

I say I would not have anything else, I never had anything else that was made for "Coca-Cola." No, sir, I have never seen any advertising in Atlanta advertising a drink under the name of "Dope." No,

(Deposition of Dr. J. D. T. Lawrence.)

I don't know why people call this drink "dope." No, I don't think I have ever heard anybody express his opinion on it or explain why—just a sort of nickname I always looked upon it, a man drinking a "Coca-Cola," they suppose it is something like coffee, I expect, and just call it "dope." "Dope" ordinarily would mean some sort of narcotic—sort of like cocaine, something on that order, that would be the real impression it would give you, you know.

Redirect Examination by Mr. ROGERS.

I don't know that I have ever heard the expression "dope sheet" in connection with horse racing, although I lived down in New Orleans about eight years. [434] Yes, sir; I have heard "the dope on the ball game"; yes, sir; that means information in that connection. Well, I say, my being a druggist, the idea associated in my mind by the word "dope" would be a habit-forming thing, and it's like a man who would take morphine, they would call it "dope,"—that's the idea, a "dope fiend." Oh, no, I never had any such idea as that, as applied to a soda-water drink, but that's the impression given me, being a druggist. Yes, sir; I think they have gotten to look at it as a slang term or nickname for "Coca-Cola," because, at first, they might have had the impression that it was a dope drink, but with me it is nothing more than a nickname for "Coca-Cola."

Recross-examination by Mr. LITTLETON.

Yes, sir; I have run across people who thought "Coca-Cola" had cocaine in it.

Deposition of Dr. F. F. Langenfeldt, for Plaintiff.**DR. F. F. LANGENFELDT.**

Direct Examination by Mr. ROGERS.

I am manager of Palmer's drug-store, 385 Peach-tree St., Atlanta, Ga., which operates a soda-fountain. We have operated this fountain ever since we have had a drug-store there, which is about eight years. Yes, sir; we sell and dispense "Coca-Cola" at the fountain and have been doing so ever since I have been there, nearly eight years. The "Coca-Cola" people here in Atlanta make "Coca-Cola." Yes, sir; I am at the fountain myself sometimes. People sometimes ask for "dope" and "Coca-Cola." I have occasionally heard them ask for "koke," very seldom though. When they ask for "koke" or "dope" I give them "Coca-Cola." Yes, sir; that is what I understand they mean by those expressions. I have known the name "dope" as a nickname for "Coca-Cola" ever since I have been in Atlanta,—for eight years I have heard people ask for it that way. Yes, sir; I am familiar with "Coca-Cola" barrels; they are all painted red. I think I could distinguish a "Coca-Cola" barrel when I see it. I haven't the slightest idea why people use this name "dope." No, I don't know what they use it for,—it's a nickname, just like everything else. [435] I couldn't tell you what it means; I know when a person is tired and they have a tendency to take "Coca-Cola" it makes them feel a little better. I have never heard of "Coca-Cola" drinkers or cus-

(Deposition of Dr. F. F. Langenfeldt.)

tomers who thought "Coca-Cola" had cocaine in it. In fact I never heard them express themselves that way.

Deposition of David G. Wise, for Plaintiff.

DAVID G. WISE.

Direct Examination by Mr. HIRSCH.

I reside in Atlanta, Georgia, where I have been living regularly for five years. I travelled out of here twelve years. I am in the retail drug business and have two stores, Adams-Wise Drug Company, 449 Peachtree Street and Gunter-Watkins Drug Company, 42 Peachtree Street, both of which have soda-fountains. I am fairly familiar with the drinks sold at the soda-fountains, which are lemon-lime-lithia, chocolate milk, malted milk, egg malted milk, grape juice, "Coca-Cola," orange phosphate, etc. "Coca-Cola" is manufactured in Atlanta by the Coca-Cola Company, I think, is the name of it. Yes, sir; that is the drink that is advertised extensively. Yes, sir; there are nicknames used for "Coca-Cola" at my soda-fountain—they often come in and ask for "dope" and "koke" and I guess that's all. When a person comes in and asks for "dope" and "koke" I understand they want "Coca-Cola." I have known the names "dope" and "koke" ever since I have been in the drug business here. Yes, sir; as applied to "Coca-Cola." Yes, I notice the containers "Coca-Cola" is in when I order it sent to me. We get it in ten gallon red kegs with "Coca-Cola" on the end—paper pasted on the end—I am putting out return kegs to-day and I noticed it—25 kegs. If I should

(Deposition of David G. Wise.)

walk down in front of a soda-water stand and see a number of kegs painted red I would think he was going to have a big soda day and going to get some money—I got \$14.00 to-day on return kegs,—its big soda day when you return those kegs. If I were to order “Coca-Cola” and it came to me in a barrel painted white instead of red my porter would likely call my attention to it and say “Doctor, this ain’t right, something wrong about this.”

Cross-examination by Mr. LITTLETON.

Yes, sir; I know why the name “dope” is used—I surmise, [436] I don’t know, but I presume it was given it because of the medicinal effect, or the talk way back when it was first manufactured,—some medicinal effect in it. I don’t know whether or not that was due to the impression, at some time or other, that it had cocaine in it. I never heard that spoken of so much as caffeine—the laity, I doubt if they know the difference in effect of cocaine and caffeine. In these days, though, they have learned a good deal about cocaine, but in those days I doubt if they knew very much about it, so I wouldn’t say if it was one thing or the other. If I saw a lot of white barrels or white kegs, or if a number of white barrels or white kegs were delivered to my place of business, I wouldn’t have any idea at all what was in them. If I ever saw any white barrels or kegs it didn’t make any impression on me. No, I do not know this product manufactured in Atlanta known as “Ko-Nut” and have never seen any of it. Yes, sir, I have seen “Afri-Cola.” Why, I don’t know how long I

(Deposition of David G. Wise.)

have known it, five or six years, I think. It was brought to me and offered for sale. It looked like "Coca-Cola." I don't recollect what it tasted like for the reason that I had had so many samples submitted like that—it tasted, of course, to a certain extent, like "Coca-Cola" but not exactly like "Coca-Cola," there is a similarity. No, I have never handled any drink similar to "Coca-Cola" since I have been in business—no other so-called cola beverage or caffeine containing beverage. Oh, yes, I have been quite a good steady customer of the Coca-Cola Company all the time—very much so—we get a very nice rebate at the end of the year.

Deposition of W. R. Stovall, for Plaintiff.

W. R. STOVALL.

Direct Examination by Mr. ROGERS.

I am the proprietor of a soda and cigar-store at 47 North Broad Street, Empire Building, Atlanta, Ga., in which business I have been engaged for two and a half years. Prior to that for four years, I was in a general store business and four years before that I was in a wholesale grocery business. Yes, sir; I have a soda-fountain in my store and am about the store so I can and do hear people when they come in and ask for drinks. I hear them quite frequently—in fact, take all the telephone orders. [437] Yes, sir, I dispense "Coca-Cola." The Coca-Cola Company is the maker of "Coca-Cola." Yes, sir; I have seen "Coca-Cola" advertising. You ask what is the thing that strikes me about the ad-

(Deposition of W. R. Stovall.)

vertising, what is the principal feature of advertising; well, there is a specific style, I don't know as I could describe the specific style, but there is a specific style, and the color is red. Yes, and has the word "Coca-Cola" on it. It is written in a peculiar style as I said just now; in other words, it is distinct from anything else that I have ever seen. Well, when people come into my store and ask for soft drinks they hardly ever call for "Coca-Cola"—I don't suppose that ten per cent of them ask for "Coca-Cola"—they ask for "dope." Yes, sir, when a man asks for "dope" I understand him to mean "Coca-Cola." Well, yes, sir, "dope" is a commonly used nickname for "Coca-Cola" in Atlanta, I should say, I have never been in any other place. (Defendants enter a broad, general, sweeping exception, to go through the record without having to repeat it so much, to all this testimony as to nicknames, because it is irrelevant and not warranted by the pleadings. Overruled. Exception.)

Deposition of Charles Alexiou, for Plaintiff.

CHARLES ALEXIOU.

Direct Examination by Mr. HIRSCH.

I reside at the corner of Luckie and Broad Streets in Atlanta. I have lived here thirteen years. I am in the soda-fountain and cigar business and attend the soda-fountain myself. Yes, sir, I dispense drinks most of the time. The main ones we sell is lemon-lime-lithia, and "Coca-Cola" and cherry phosphate, pineapple syrup and vanilla. Yes, sir,

(Deposition of Charles Alexiou.)

that drink "Coca-Cola" is manufactured here in Atlanta by Asa Candler. The name of his company is the Coca-Cola Company. That is the drink I see advertised around—I guess so. Yes, sir, I know it is. At my soda-fountain they call for "Coca-Cola" under other names—sometimes say "give me 'dope'." By that I understand they want "Coca-Cola," that's the way I understand it, and sometime I ask them myself, I am sorter soda-jerker. I have two gentlemen come along, one say "give me 'Coco-Cola,' " one say "give me 'dope' and lime"; and so for fun I give one "dope" and the other one "Coca-Cola" [438] and he say "No, I want 'Coca-Cola,' " and the other one, just like.

Cross-examination by Mr. LITTLETON.

I am a Greek. No, I am not liable for military service here. Yes, sir; I also sell root beer and sarsaparilla from my fountain.

Deposition of J. F. Redding, for Plaintiff.

J. F. REDDING.

Direct Examination by Mr. HIRSCH.

I reside at 231 Stewart Avenue, Atlanta, Ga. I guess I have resided in Atlanta about eight years. I am in the drug business. As to my particular duty, why I just perform duties all over the store—prescription department, patent medicines and soda-fountain, all around. I have been in this business nearly two years for myself; before that time I was working for Cox's Pharmacy, East Point, and Kimball's Pharmacy, Boulevard and Edgewood, Atlanta.

(Deposition of J. F. Redding.)

A few of the drinks dispensed at the soda-fountains where I have worked are "Coca-Cola," lemon-lime, lemon sodas, etc. "Coca-Cola" is manufactured in Atlanta by the Coca-Cola Company. Yes, sir; that is the drink that is advertised so extensively. Yes, sir; that is the drink I understand when "Coca-Cola" is referred to. Yes, sir, "Coca-Cola" is asked for at my fount by other names, such as "Asa G." and "shot" and "dope" and "koke," and those names, and several others. When a man comes into my fountain and asks for "dope" and "koke," "Coca-Cola" is what I give him. Yes, sir, I understand that that applies to "Coca-Cola." Those names have been in use ever since I have been dispensing drinks. When I order "Coca-Cola" it is sent to my place of business in kegs painted red. If I should see in front of a soda-fountain a lot of red kegs, what would flash through my mind would be that they were "Coca-Cola."

Cross-examination by Mr. LITTLETON.

Yes, sir, I am a customer now of the Coco-Cola Co. When I order "Coca-Cola" from the Coca-Cola Company I order "Coca-Cola." No, sir, I don't order "koke" or "dope." No, sir, I have never seen the words "Dope" or "Koke" in any "Coca-Cola" advertising nor have I ever seen those words affixed to any packages or containers containing "Coca-Cola." [439] No, sir; I have never handled any beverage similar to "Coca-Cola" other than "Coca-Cola." Yes, sir; I have heard that the "Coca-Cola Company is sending out men to

(Deposition of J. F. Redding.)

the different fountains to test and see if they are all handling "Coca-Cola"—they never came into my place and I am not positive that they do. Yes, I am the owner of that store. Why, no sir, I don't know as I do know of any similar beverage to "Coca-Cola" that is being sold in Atlanta. I know they have tried to sell them but I couldn't say they are on the market because I don't handle them. Probably they are, but I don't know that. Yes, sir, I have seen red barrels other than "Coca-Cola" barrels. I don't recollect where I have seen them, but I have seen red barrels, though. I don't remember what was in those barrels.

Deposition of Charles B. Giardina, for Plaintiff.

CHARLES B. GIARDINA.

Direct Examination by Mr. ROGERS.

My business is soda-fountain and cigars, 77 South Pryor St., Atlanta. It is known as the Bell Cigar and Sodawater Company. I have been in this business over two years, in Atlanta. Most of the soft drinks we dispense at our soda-fountain is "Coca-Cola" Mr. Candler makes "Coca-Cola" so far as I know—the Coca-Cola Company. Yes, sir, I am around the front myself so that I can hear people when they come and ask for drinks, I spend most of the time there during the day, I dispense it more than any other man I have got in the house. When people mean "Coca-Cola" they call "dope" and sometimes "koke" in calling for it at my store. When a man calls for "koke" or "dope" I under-

(Deposition of Charles B. Giardina.)

stand that he wants "Coca-Cola," I don't handle any other drinks similar to "Coca-Cola." No, sir, I have never had anybody say that ain't what he wanted when I furnished "Coca-Cola" in response to such a request. I can swear to that because the trade I have got is, you might say, a regular trade, like this building—go down stairs and get drinks—that's the reason I say this; have very few transient trade, and some people say sometimes "give me a 'Coca-Cola' and they drink three and four times a day, sometimes twice a day and then next time they come in and say 'well, give me a 'dope' "—you see? It's just that way. [440] Yes, sir, I understand when they say "give me a 'dope,' " they mean "Coca-Cola."

Cross-examination by Mr. LITTLETON.

I know these same people, they ask for "dope" they want "Coca-Cola," because they ask me "give me 'Coca-Cola' sometimes," they just say—comes right out of the mouth—"give me a 'dope' " just that way, and next time they might say "give me a 'Coca-Cola' "—same thing, I know, because they get the same thing. Of course, I know pretty much what they want any way, whether they ask for it or not. But, of course, sometimes they change, they take lemon and lime and chocolate milk, but when they want "Coca-Cola" and "dope" they want the same thing all the time—"Coca-Cola." No, sir; if they came and told me "give me a 'shot' " I wouldn't give them a shot, I ain't got no gun to shoot with. No, sir, I never heard anybody saying "give me a 'shot'." If they come in and ask me to give them

(Deposition of Charles B. Giardina.)

“A Candler Highball’ I would give them “Coca-Cola” because they express it, to give them a “Candler” drink. If they come in and ask me to give them a “glass of ‘coffin varnish’,” I haven’t got it. I ain’t got any “embalming fluid” either. If they asked for that I couldn’t give them anything, I don’t know what I would give them. Yes, sir; I have been in business here in Atlanta a little over two years right under the eyes, as it were, of the Coca-Cola Company. I sell more “Coca-Cola” than anything else in the drink line. Of course, I sell as many as fifty to sixty in one tray at dinner times, of course, I don’t care for Mr. Candler or anybody else, but I tell that which is true, that’s all.

Deposition of W. A. Medlock, for Plaintiff.

W. A. MEDLOCK.

Direct Examination by Mr. ROGERS.

I guess you might call me a druggist,—my main store is located at 27 Gordon Street. I have three stores altogether in Atlanta, at each of which I operate soda-fountains. We dispense all the common calls at our soda-fountain, including “Coca-Cola.” The “Coca-Cola” Company of Atlanta, Ga., is the maker of “Coca-Cola.” I don’t know how long I have known “Coca-Cola,” I have known it almost since it came out. [441] Well, I guess I have been drinking “Coca-Cola”—I think I can safely say, for fifteen years. Yes, sir; I am around the fountains in my various stores so that I can hear the people ask for drinks and hear the names they use to designate

(Deposition of W. A. Medlock.)

the thing they want. Yes, sir; I hear calls for "Coca-Cola." You ask if people ever use nicknames when they mean "Coca-Cola"; well, they come in and call for "Morning's Morning" or "dope," about the only nicknames I know of. When a man asks for a "morning's morning or a "dope" I understand that to mean "Coca-Cola." I do not furnish anything else in response to such requests, because I don't handle anything like "Coca-Cola." No, I have never heard anybody say that "Coca-Cola" wasn't what they meant when they asked for "dope." "Q. 22. Do you regard the word 'dope' as a familiarly used and common nickname for "Coca-Cola' "? "A. Yes, sir." I buy my "Coca-Cola" syrup in kegs which are a dark red color, I guess you would call it. I should think I could distinguish a "Coca-Cola" keg readily by its peculiar color.

Cross-examination by Mr. LITTLETON.

You ask what is peculiar about that color; well, it's the only color that we have had like it, that I know of, I don't know any other barrel that is painted that color. No, I have never seen any Standard Oil barrels painted that color; most of their barrels, I think, are blue. You ask if I have ever seen any kegs or barrels in which the other cola beverages on the market are shipped in; we don't handle any other kind, I can't say that I would know that, we don't handle any substitutes for "Coca-Cola" of any kind, and I don't know that I would. Of course, if there was another keg that was painted

(Deposition of W. A. Medlock.)

that color and brought out, marked "Coca-Cola" and had something else in it, I wouldn't be able to tell you that was not "Coca-Cola," if it was painted like "Coca-Cola"; but if it had a different color, or different in appearance, I would become suspicious. I have lived in Atlanta since my last coming, 3½ years ago. I am a regular customer of the Coca-Cola Company. [442]

Deposition of Linton Stephens, for Plaintiff.

LINTON STEPHENS.

Direct Examination by Mr. HIRSCH.

I reside at 59 Walker Street, Atlanta, Ga. We have lived here in Atlanta about 22 years, I suppose. I am a soda dispenser and cigar clerk, and have been for about 10 years all told. I have dispensed "Coca-Cola," lemon-lime-lithia, chocolate milk, cherry phosphate and all soda-fountain drinks. The drink "Coca-Cola" is made in Atlanta by the Coca-Cola Company. Yes, sir; that is the drink so extensively advertised. Yes, sir; I have gone out of Atlanta and "Coca-Cola" is advertised all over. I have known the drink "Coca-Cola" about 15 years, I suppose. You ask what names are used in calls at the fountain besides "Coca-Cola"; well, not any as I know of. Some call for "Coca-Cola" and to make it short they call for "dope." I believe that is all I heard. I have only known the name "dope" as applied to "Coca-Cola" just a few years. When they ask for "dope" they ask for "Coca-Cola," they don't ask for any other drink at all. They don't say

(Deposition of Linton Stephens.)

"Coca-Cola" because it is too long, they call for "dope." Yes, sir; it is just a nickname for "Coca-Cola." Yes, sir, I have had occasion to notice the kind of barrels and kegs "Coca-Cola" is received in. I notice they are all red. No, sir; I have never seen "Coca-Cola" in any other kind of barrels, or kegs, except red barrels.

Cross-examination by Mr. LITTLETON.

Well, I have an idea why people and customers use the word "dope," they don't want to call it "Coca-Cola" because it is too long, possibly that's one reason they call it "dope"—because that's been the nickname for it for several years—they call it "dope" and when they call for "dope" they don't want anything but "Coca-Cola." I couldn't exactly explain what the word "dope" means, generally. I never have heard it used in any other connection. Oh, yes; I have heard about the "dope on the baseball game." Yes, sir; I have heard of "dope fiends," as applied to cocaine fiends. That "dope fiend" is applied to a cocaine fiend, but that's not including "Coca-Cola" in it though, because cocaine [443] is a drug, and "Coca-Cola" is a "Coca-Cola"—is a drink. I couldn't exactly tell you whether "Coca-Cola" is made out of drugs. No, sir, I have never seen anybody who thought that it had cocaine in it. No, sir, I didn't ask them one way or the other. I have heard a whole lot of remarks about it, but I never heard of any remark of any one that it had cocaine in it at all. It is a sort of hard proposition to tell you right now, just what remarks I have

(Deposition of Linton Stephens.)

heard about it. I have never heard anything of "Coca-Cola" containing cocaine at all—I have sold "Coca-Cola" eight or ten years and I have never heard any customer of mine make any remark of its containing cocaine or any other injurious ingredients in it—not by a single customer. I have been dispensing "Coca-Cola" in this town for about ten or twelve years, off and on. No, sir, I have never handled anything else but "Coca-Cola" at my fountain. I have handled all the other drinks but only one "Coca-Cola." The other drinks I refer to are such drinks as lemon and lime, lemon-lime-lithia, chocolate milk and all other such fountain drinks of that kind. I have seen several drinks on the market similar to "Coca-Cola"—"Ko-Nut," "Afri-Cola," "Kola-Ade." "Ko-Nut" looks like something similar to "Coca-Cola" and root beer, I don't know that I have ever tasted it. I think I have seen the "Ko-Nut" wagon going around town delivering it. I can't say that I have seen that wagon delivering barrels and kegs because I never saw these people delivering it in barrels and kegs—all I seen was in bottles. No, sir, I don't believe I have ever seen the soda-fountain beverage "Ko-Nut." No, sir, I wouldn't know it if I saw it. Yes, sir, I have seen "Afri-Cola"—it was a bottle beverage. I don't know whether they dispense that at soda-fountains or not, because I never did handle anything but "Coca-Cola" at soda-fountains where I worked. No, sir, I never have seen any such beverages besides these

(Deposition of Linton Stephens.)

two. I have lived here in Atlanta about twenty years and have never had any trouble with the Coca-Cola Company.

Deposition of George Moore, for Plaintiff.

GEORGE MOORE.

Direct Examination by Mr. ROGERS.

I live in Atlanta and by business is manufacturing icecream, [444] candy, jobber of "Coca-Cola" and anything of that kind, soda water and supplies and a retail place, too, in which I have a soda-fountain. Why, sure we dispense "Coca-Cola" at our fountain. I guess the Coca-Cola Company in Atlanta makes "Coca-Cola." Yes, sir; I am about the fountain myself, I used to work for ten or twelve years, I don't work now, but I do sometimes in the morning. Yes, sir; I am around the fountain so I can hear people ask for drinks—I am always in the morning, except sometimes when I go out. Sure, I get telephone calls for drinks and send them out. Yes, sir; I know the names people use when they mean to call for "Coca-Cola." All of my customers—I say all of them because I know them all and I have been there eighteen years at that corner, and I know them all—when they want "Coca-Cola" they call "give me a 'dope.'" Sometimes they ask for "Koke" or "caffeine" and "Candler's Highball," they mean "Coca-Cola" just the same, thats what they want—just a nickname they have for it—and even myself, I am ashamed to say it, myself the boss—when I want sometimes a drink, I say "give me a

(Deposition of George Moore.)

‘dope’ ” I just got the habit of it, I hate to say it, but I do it a good many times. Oh, I have known the word “dope” as a nickname for “Coca-Cola” a long time, since 16 or 18 years ago, almost since I have been at that corner. “Q. 17. Do you recognize the word ‘dope’ as a nickname for ‘Coca-Cola’?” “A. Why, yes, sir.” “Q. 18. Do your customers?” “A. The customers do.” They don’t mean nothing but a “Coca-Cola” for a nickname for “Coca-Cola,” they call it “dope.”

Cross-examination by Mr. LITTLETON.

I am a Greek. Sometimes one person calls at my place for “caffeine” and one or two persons “Candler’s Highball” and about seventy-five or eighty per cent call for “dope.” It got so in the last couple of years pretty nearly eighty to ninety per cent called “dope” instead of “Coca-Cola”—you might say ninety per cent.

Deposition of Pete Verge, for Plaintiff.

PETE VERGE.

Direct Examination by Mr. HIRSCH.

I live at 71 West Mitchell Street, Atlanta, Georgia. [445] I have lived in Atlanta about 14 years. My business is cigars and soda water. Yes, I am frequently behind the soda-fountain. Besides the ice-cream sodas and lemon-limes—we sell “Coca-Cola,” cherry smash, a little bit. I knew the drink “Coca-Cola” since I came from Europe, 14 years ago, when I came to the city of Atlanta. It is manufactured in Atlanta by the Coca-Cola Company. Yes, sir; that

(Deposition of Pete Verge.)

is the drink that is so extensively advertised around. You ask what names are used at my fountain in making "Coca-Cola"; we have "Coca-Cola" signs, you know, but people call different names, you know—call it "dope"—of course, when they say "dope" we know they want "Coca-Cola," you know. Well, sometimes the boys call it "Candler's highball," but not as much as they do "dope" in my place. They say "dope" seventy-five times and "Coca-Cola" twenty-five times. I understand the word "dope" to mean "Coca-Cola." No, I never hear the expression "koke,"—just "dope," you know. "Coca-Cola" is sent to me in ten gallon red kegs.

Cross-examination by Mr. LITTLETON.

I have never heard any other cola or caffeine containing beverage asked for at the soda-fountain, except "Nova-Cola"—they used to have that sometime ago, or "Arrow-Cola," I haven't got it now, though. Yes, sir, I handled that, but the "Nova-Cola" went out of business. No, sir, people didn't ask for that by the name "dope,"—they say, "Nova-Cola." No, I never heard anybody ask for that by the name of "dope." "Arrow-Cola," too, used to sell at one time, you know,—very little, though, one call every 15 days. We sell five gallons of "Coca-Cola" every day. When the Coca-Cola Company found out I was handling "Nova-Cola" they never said a thing, you know, we was handling "Coca-Cola," too, you know. Oh, yes, I was handling "Coca-Cola" at the same time, like icecream soda and everything else—yes, sir, like I was handling "Nova-Cola," like I have

(Deposition of Pete Verge.)

cherry smash now, too, you know. No, sir, "Nova-Cola" was not a similar drink to "Coca-Cola." A man drinks "Coca-Cola," knows what it is at that time; at that time if "Nova-Cola"—I don't know a thing about it. There used to be a Nova-Cola Company that made "Nova Cola" located on Mitchell Street, across to my place. [446] They used to be in Rome, Ga., and I think they are there now, if I am not mistaken. The color of it was the "Coca-Cola" color, pretty near it, you know. It taste a little sort like sweet—never was like "Coca-Cola." No, it did not taste like "Coca-Cola," no, it looked like "Coca-Cola," of course, the color. You ask what that one of the cola beverages, well, I guess so, it was "Nova-Cola," I guess was some cola about it. No, sir, "Nova-Cola" tasted nothing like "Coca-Cola." I was born at Athens, Greece,—I am a Greek.

Deposition of W. N. Tumlin, for Plaintiff.

W. N. TUMLIN.

Direct Examination by Mr. ROGERS.

I live in Atlanta, Ga. My place of business is in the Healey Building. I operate a soda-fountain in Atlanta and have been doing so for about ten years. I am around the fountain about fifteen hours a day and hear people when they come in and ask for drinks and know the names they use. They use "dope" mostly. When a man asks for "dope" I understand he means "Coca-Cola" and that is what I furnish him. I have never had it rejected on the ground that it was not what the purchaser meant.

(Deposition of W. N. Tumlin.)

They use various names such as "dope" or "koke" or "Candler's Highball." I understand them all to mean the same thing—"Coca-Cola." "Q. 13. State whether or not from your experience the word 'dope,' 'Koke,' and 'Candler's Highball' are familiar nicknames for 'Coca-Cola' so used by the public and understood by the trade." "A. It is." (Objected to by defendants because the question is leading and suggestive. Overruled. Exception.) "Coca-Cola" is manufactured by the Coca-Cola Company, I believe is the name of it, in Atlanta. Well, the word "dope" as a nickname for "Coca-Cola" came into prevalent use about seven or eight years ago. I suppose seventy-five per cent of my trade would designate "Coca-Cola" by some nickname. About sixty per cent of that seventy-five per cent would be "dope," some "koke" and some "Candler's Highball." I get my "Coca-Cola" syrup in barrels and kegs. You ask what there is about the barrel, if anything, that enables me to identify it; well, its coloring, which is red. No, I have never seen any "Coca-Cola" barrels that weren't red. If I should be waking down the street and should see a block away, say, in front of some place where [447] there was a soda-fountain, a pile of red kegs, I would think from that that it was "Coca-Cola." Yes, sir; that would be true even if I were far enough away that I couldn't see the label on the keg. It has a distinct color that you have seen so much you would know it without stopping to think about it.

(Deposition of W. N. Tumlin.)

Direct Examination by Mr. LITTLETON.

No, sir; I have never seen the words "Dope" or "Koke" used or employed by the Coca-Cola Company in any of its lables, tags, advertising or anything of that sort.

Deposition of W. A. Hartman, for Plaintiff.

W. T. HARTMAN.

Direct Examination by Mr. HIRSCH.

I live at 173 Ashby Street, Atlanta. I have lived in Atlanta about 23 years. I am in the cigar and soda water business and have a soda-fountain, from which we dispense lemon-lime-lithia, "Coca-Cola," chocolate milk, buttermilk—all drinks that are usually sold at a fount. I should say I have known "Coca-Cola" 15 or 16 years, something like that, possibly longer, I don't know, just exactly. It is manufactured in Atlanta by Mr. Candler,—the company is the Coca-Cola Company. Yes, sir, that is the drink named "Coca-Cola" that is advertised around the towns I have been in. You ask what names are used in designating "Coca-Cola" at the fountains I have been to, besides "Coca-Cola"; well, its called "dope"—I get orders over the telephone, "send me a 'dope' and lime" or "a 'dope' and orange." I have occasionally heard the name "koke" used, but not very much, not as much as I have "dope." I understand the names "dope" and "koke" to mean and apply to "Coca-Cola" and "Coca-Cola" is what I serve in response to such requests. "Coca-Cola" is delivered to our place of

(Deposition of W. A. Hartman.)

business in ten gallon kegs which are painted red. You ask how I could distinguish a keg of "Coca-Cola" by its appearance; I could distinguish it by the color of it. No, sir, I have never seen it in anything else except red kegs or barrels. If I should see a line of red kegs or barrels in front of a soda-fountain what would flash immediately in my mind would be that they are "Coca-Cola" kegs. [448]

Cross-examination by Mr. LITTLETON.

I have been in the soda-water business about five years. No, sir; I have never seen the word "Dope" or "Koke" used or employed by the Coca-Cola Company in any advertising, literature, or affixed to any containers containing "Coca-Cola."

(It is stipulated and agreed between Counsel that the Coca-Cola Company has never attached the name "Dope" or "Koke" to anything containing "Coca-Cola" and has never authorized the use of the name "Dope" or "Koke.")

Deposition of T. C. Marshall, for Plaintiff.

T. C. MARSHALL.

Direct Examination by Mr. HIRSCH.

I live at the Chesterfield, 15 West Harris St., Atlanta. I have lived in Atlanta 31 years. I am a druggist and I have worked in drug-stores for 19 years, which stores have all had fountains in them. The drinks that were dispensed from those fountains were soda water, ice-cream soda, chocolate milk, hot chocolate, "Coca-Cola," etc. This drink, "Coca-Cola" is manufactured in Atlanta by the

(Deposition of T. C. Marshall.)

Coca-Cola Co. I have known the drink "Coca-Cola" twenty-odd years. Yes, sir; that is the drink that is advertised extensively here and elsewhere. The other names that are used at the fountains, that I am acquainted with, in calling for "Coca-Cola" are "Coca-Cola," "dope," "koke," and "shot in the arm." I have known "dope" ever since I have been serving it. "Koke," though, hasn't been used but about the last ten years to much extent. I understand the names "koke" and "dope" to mean "Coca-Cola," and that is what I serve when those names are asked for. You ask if I know any other drink of a similar kind or character to "Coca-Cola" that is on the market or that was on the market, before these terms, "koke" and "dope" were used; well, way back yonder the old Wine of Coca Company—when I first started to sell soda water, they were here then, that is the only one I remember. Yes, sir; the old Wine of Coca, that was here when I first started serving drinks. "Q. 19. The terms "dope" and "koke" apply exclusively to "Coca-Cola" do they not? "A. Yes, sir." (Objected to by defendants because leading. Overruled. Exception.) [449] Yes, sir; I see the kegs come in when I order "Coca-Cola." They are colored red. No, sir; I have never seen "Coca-Cola" in any other kind of a keg.

Cross-examination by Mr. LITTLETON.

Yes, sir; we have handled other beverages besides "Coca-Cola"—other beverages similar to that—we tried a lot of those. A lot of these companies that

(Deposition of T. C. Marshall.)

spring up go around and leave you a dispensing bottle, but we have never sold any, it never did go. They used to come in and break, you know, probably last a year or two and you never heard of them again. Yes, sir; I have heard other beverages similar to "Coca-Cola" asked for at soda-fountains. Just as I say, like two or three of them here, you have them come in and ask for them but we never did sell them at all. Somebody down here on Edgewood Avenue got up a drink—I have forgotten the name now,— "Coca-Nola." Yes, sir; I have seen the Hagan & Dodd's delivery wagon going around town—the "Ko-Nut" and "Afri-Cola" people. No, sir; I have not seen them delivering their barrels at soda-fountains; generally, when their wagon came out our way, they would have just bottled stuff on it. That is the only stuff I have seen on the wagon besides "Red Rock," lemon and lime and such stuff. Yes, sir; I have handled sarsaparilla and root-beer at my fountain all the time I have been in business. No, sir; that is not practically the same color as "Coca-Cola." It is a good deal darker. Yes, sir; I could readily distinguish between the two—they are served at the soda-fountain differently—well, it is served in a different size glass. Yes, sir; you could tell it even if it were served in the same size glass, if you draw it full and not put all that foam in it, you could tell the difference. I sell Hires' Root-Beer. You ask what kind of sarsaparilla I sell; well, when you call for sarsaparilla we use Hires' Root-Beer—yes, sir;

(Deposition of T. C. Marshall.)

just like “dope” means “Coca-Cola”; if they come in and say “give me sarsaparilla” we give them Hires’ Root-Beer. [450]

Deposition of J. B. Pendergrast, for Plaintiff.

J. B. PENDERGRAST.

Direct Examination by Mr. ROGERS.

I am a druggist. My store is located at 154 Mooreland Ave., Atlanta, Ga. I have been in the drug business either working for someone else or as proprietor for twelve years. Yes, sir; I have dispensed “Coca-Cola” all that time. The “Coca-Cola Company makes “Coca-Cola—Candler, I suppose. Yes, sir; by “Coca-Cola” I mean this drink that is so extensively advertised. Yes, sir; I am familiar with the advertising. Yes, sir; I am around the fountain myself so that I hear people come in and ask for drinks; I have worked at the fountain some myself. No, that has not been true all the time I have been in business, but it has been, though, for the last six years. You ask if I know the names people use when they mean “Coca-Cola”; well, the one we get most is “dope.” When a man asks for “dope” at my soda-fountain I understand that he means “Coca-Cola” and always furnish “Coca-Cola” on such calls. No, sir; I have never had any one to turn it back and say it was not what was wanted. Yes, sir; I have heard the word “koke” as a nickname for “Coca-Cola” but not recently; it was several years back they used that a good deal. It meant, as applied to a soft drink, “Coca-Cola.”

(Deposition of J. B. Pendergrast.)

Well, as far as I remember I have heard the nickname "dope" as a nickname for "Coca-Cola" at least ten years. All that time we considered it a nickname for "Coca-Cola." "Q. 22. You consider that as a definite request for 'Coca-Cola'?" "A. Yes, sir; we get it—we get calls for 'Candler's High-ball,' 'Candler's "dope,"' but I think, though, half of them call for 'dope' meaning 'Coca-Cola.' " We get "Coca-Cola" syrup at our store in ten gallon red kegs. No, I have never seen a "Coca-Cola" keg that wasn't red. If I saw a cart-load of kegs going down the street, some red and some white, I would naturally think of "Coca-Cola," being a red keg.

Cross-examination by Mr. LITTLETON.

I am 28 years old. Well, we have tested a number of beverages similar to "Coca-Cola"; we have had samples brought to us and tasted them, things of that kind, never served any of them, though. [451] Yes, sir; we have been an exclusive customer of the Coca-Cola Company during the time we have been in business. Some of the nicknames I have heard "Coca-Cola" called by are, "Candler's 'dope'" and "Candler's cocktail," "a shot," "morning's morning," "eye-opener," and "brick in the Candler building," "help out Candler a little," "put another brick in his building." In all these instances we served "Coca-Cola." No, sir; we have no other similar beverage in our fountain but "Coca-Cola." No, sir; we haven't any other so-called Cola or caffeine-containing beverage in our fountain.

(Deposition of J. B. Pendergrast.)

Redirect Examination by Mr. ROGERS.

Yes, sir; irrespective of what I may have at my fountain I consider these various expressions, "koke," "dope," "Candler Highball," "brick in the Candler building" as definite designations of "Coca-Cola." They are all expecting "Coca-Cola"; that is what they all want; we never have any comment of any kind on it; they were always expecting "Coca-Cola"; that is our understanding of it. If I were to meet a friend on the street and he would say to me "Let's go into this soda-fountain and have a 'dope,'" I would understand that he was talking about "Coca-Cola,"—that he was asking me to have a "Coca-Cola" with him.

Recross-examination by Mr. LITTLETON.

No, sir; I have never seen the word "Dope" or "Koke" used or employed by the Coca-Cola Company in any advertising, literature, or affixed to any packages or containers containing "Coca-Cola."

Deposition of Thomas Myer Murphy, for Plaintiff.

THOMAS MYER MURPHY.

Direct Examination by Mr. HIRSCH.

I am 19 years of age, reside at 25 Evans Drive, Fort McPherson, Atlanta, Ga. I have been living in Atlanta about eight years, altogether. I go to school at the University of Georgia, where I have been a student for one year. Prior to that time I was working for the law firm of Candler, Thomson & Hirsch. I started [452] with them September 5, 1908, and worked with them ever since, up to

(Deposition of Thomas Myer Murphy.)

the time I left to go to the University, which was sometime in the middle of September, 1913. At the present time I am working for the Coca-Cola Company in the capacity of special representative, and as such receive a salary from the Coca-Cola Company. I do not receive any reward for any reports I might make or services I might render, other than my salary. As such special representative I have visited on behalf of the Coca-Cola Company the following towns: Summerset, Lexington, Louisville, Bowling Green, Owensboro, in the State of Kentucky; Helena Little Rock, Texarkana, Camden, Pine Bluff, Brinkley, Newport, Walnut Ridge and Pochahontas, in the State of Arkansas; Poplar Bluff, Sykeston and Cape Girardo, in the State of Missouri. These are all the towns I visited. The places of business I visited in the towns referred to are as follows: In Summerset, Ky., I visited Kelsey Drug Co. and the Palace of Sweets. In Lexington, Ky., I visited C. A. Johns Drug Store, Smith's Drug Store, Jones Drug Company, McAdams and Morford, druggists, Thompson Drug Company, Lexington Drug Company and Wm. Stagg, druggist. In Louisville, Ky., I visited Burnmeyers Bros. Inter-Southern Catering Company, one of the stores of T. P. Taylor & Company, druggist, the Newman Drug Company, J. B. Baird, druggist, one of the stores of H. O. Hurley, druggist, and Kline & Sons, Confectionery. In Bowling Green, Ky., I visited Gallis Bros. and J. E. Tyler, druggist. In Owensboro, Ky., I visited the Wellman Drug Company,

(Deposition of Thomas Myer Murphy.)

Public Drug Company and Readman's Pharmacy. In Helena, Ark., I visited Myers Drug Company, Palace Drug Company and the Govan-King Drug Co. In Little Rock, Ark., I visited Snodgrass-Bray Drug Co., Reads-Stahl Drug Co., State Drug Co., Pittman Drug Co., Perin's Drug Co. In Texarana, Ark., I visited the Evanson Drug Co. and the Boyd Drug Co. In Camden, Ark., I visited Arthur Levy, druggist, and Morgan Drug Co. In Pine Bluff, Ark., I visited Seals Pharmacy, Rosenberg's Pharmacy, and Bedell's Pharmacy. In Brinkley, Ark., I visited the Dutton Drug Co., W. K. Sims Drug Co. In Newport, Ark., I visited the Bevans Drug Company and the Walker Drug Co. In Walnut Ridge, Ark., I visited Moses Cooper's place and Bob Cooper's place. In Pocahontas, [453] Ark., I visited Brinkley Drug Co., Layman Drug Co. In Poplar Bluff, Mo., I visited Patton & Farr Pharmacy and Gliddens Candy Kitchen. In Sykeston, Mo., I visited J. A. Poindexter, and Dorris Drug Store. In Cape Girardo, Mo., I visited the St. Charles Pharmacy, Dalton Drug Co., and A. B. Miller's Confectionary and Drug Store. Of the towns I went to only the last three I visited were selected for me to go to; namely, Poplar Bluff, Sykeston & Cape Girardo, Mo. I received instructions from the office of Candler, Thomson & Hirsch to go to these towns. No, sir; nobody selected for me the places I should go to in those towns. I was told to go wherever I pleased and I did so. There were no restrictions whatever put upon me as to the places I should

(Deposition of Thomas Myer Murphy.)

go into. When I would go into a place on my first visit I usually called for "Coca-Cola" and noted the container from which the syrup to make the drink was drawn, and noted whether or not any customers entered and called for "Coca-Cola," "dope," or "koke." On my second visit I called for a "dope," or "koke" and noted the container from which the syrup to make that drink was drawn, and noted whether or not that syrup was drawn from the same container as the syrup to make the drink on my previous call for "Coca-Cola." The next thing I would do would be to interview the proprietor of the place. I would state to the proprietor that I had had occasion to visit his store and had called for "dope," "koke," and "Coca-Cola" and had noticed during my stay at his store other calls for "dope," "koke" and "Coca-Cola" and noticed that the syrup to make those had been drawn from the same container, and then asked him what his opinion was as to the meaning of the words "dope" and "koke" when applied to a soda-fountain beverage. In some of the places I made what is called a consumers' test. In making this test I would have the proprietor instruct the dispensers on duty to ask customers who came in and called for "dope" or "koke," as to whether or not they meant "Coca-Cola" and I would take up a position in close vicinity to the fountain where I could hear all the requests of the customers for "dope," "koke," and "Coca-Cola," and where I could hear the dispensers' questions to the customers and their replies [454] and I would record the

(Deposition of Thomas Myer Murphy.)

calls and the replies of the customers. Everyone whom I interviewed told me it was his understanding that the words "koke" and "dope," as applied to a soda-fountain beverage, meant "Coca-Cola" and only "Coca-Cola." I noticed that the syrup to make the drink "Coca-Cola," "dope," and "koke," both on my calls and the calls of customers, were drawn from the same container, regardless of the name of the drink called for. Each and every customer who replied to the dispenser's question stated that he meant "Coca-Cola" when he called for "dope" or "koke." In each place where I made a consumers' test the same method as that detailed above was carried on, with the result I have already stated. Yes, sir; in every town I visited I saw extensive advertising of a product advertised under the name of "Coca-Cola." In those advertisements the name "Coca-Cola" was prominently displayed, in the same style of script as is shown in Plaintiff's Exhibit #95. In the course of my visits to the towns mentioned, in no instance and in no way, shape or form, did I see any drink advertised under the name of "Dope" or "Koke." I visited in all, 17 towns. I interviewed, in all 122 proprietors, managers, or dispensers. I made 26 consumers' tests in which there were 519 calls for "Coca-Cola," 98 calls for "dope" and 302 calls for "koke." In these consumers' tests, I heard the questions of the dispensers and the replies of the customers thereto in every instance. Yes, sir; in these consumers' tests in every instance, "Coca-Cola," "dope" and "koke" were all

(Deposition of Thomas Myer Murphy.)

taken from the same container. Yes, sir; all the replies made to the dispenser, in asking what they meant by "koke" and "dope," were the same. In each town I went into I made a consumers' test, and sometimes more, and in every place I interviewed either the manager or the proprietor. I always obtained the statement that the opinion of the manager or proprietor was that the meaning of the words "dope" and "koke," as applied to a soda-fountain beverage, was always "Coca-Cola" and meant "Coca-Cola." Yes, sir; I noted how the containers were marked in each instance. In Summerset, Ky., at the Kelsey Drug Company, all the containers were unlabeled, as were all the containers in the Palace of Sweets. [455] In Lexington, Ky., at the store of C. A. Johns, druggist, at the Jones Drug Company and at Wm. Stagg, druggist, the container was labeled "Coca-Cola." At the store of June Smith, druggist, and at McAdams & Morford Drug Store all the containers of the fountain were unlabeled. At the Thompson Drug Company the containers were labeled "pineapple" and at the Lexington Drug Company the label on the container used was worn off. In Louisville, Ky., at Burnmeyers Bros., druggists, the container was labeled "pineapple." At T. P. Taylor & Company's store, it was labeled "banana." At the Inter-Southern Drug Company and at the New Port Drug Co., none of the containers in the fountain was labeled. At H. O. Hurley's store, the container was either unlabeled or the label wasn't visible—it was a bottle container and

(Deposition of Thomas Myer Murphy.)

setting down in a hole. At Kline & Sons, Confectionery, and at the J. B. Baird Drug Company, the container used was labeled "Coca-Cola." At Bowling Green, Ky., at Gallis Bros., druggists, the container was labeled "Coca-Cola," while at the store of J. E. Tyler, druggist there was no label on the particular container used. At Owensboro, Ky., at the Weldman Drug Company, the container was labeled "tonic." At the Public Drug Company it was labeled "Coca-Cola" and at Reedman's Pharmacy it bore no label. At Helena, Ark., at the Myers Drug Company and the Palace Drug Company the container was labeled "Coca-Cola"; at the Govan-King Drug Company the container was unlabeled. In Little Rock, Ark., at Reads-Stahl Drug Company, the container was labeled "ginger." At the City Pharmacy it was labeled "pineapple," and at the Snodgrass-Bray Drug Company, the Pittman Drug Company, Perin's Drug Company, the container bore no label. In Texarkana, Ark., at the Evanson Drug Company and the Boyd Drug Company the container was unlabeled; in Camden, Ark., at the store of Arthur Levy, druggist, and at the Morgan Drug Company, the container bore no label. In Pine Bluff, Ark., at Seals Pharmacy, Rosenberg's Pharmacy, the container contained no label. In Brinkley, Ark., at the Dutton Drug Company, and the store of W. K. Sims Drug Company, the container was labeled "Coca-Cola." In Newport, Ark., at the Bevans Drug Co., the container bore no label,

(Deposition of Thomas Myer Murphy.)

while at the Walker Drug Company, it was labeled "Coca-Cola." [456]

In Walnut Ridge, Ark., at Moses Copper's place the container used was labeled "Coca-Cola" while at Bob Cooper's place it bore no label. In Pocahontas, Ark., at the Brinkley Drug Company the container used bore no label, while at the Layman Drug Company it was labeled "Coca-Cola." In Poplar Bluff, Mo., at the store of Patton & Farr, at the Gliddens Candy Kitchen and at the Paris Candy Kitchen, the container bore no label. In Sykeston, at the store of J. A. Poindexter, the container was labeled "Coca-Cola," while at the Derris Drug Company the container used was labeled "chocolate." In Cape Girardo, Mo., at the St. Charles Pharmacy, the container used was labeled "cherry," while at the Dalton Drug Company and at E. B. Miller's it was labeled "Coca-Cola." I did not see any container labeled "Dope" or "Koke" while I was away.

I had a conversation with Mr. J. F. Callis, of Callis Brothers, at Bowling Green, Ky.; I asked Mr. Callis whether or not he had been approached the representatives of the Koke Company, and he stated that a Koke salesman had attempted to induce him to substitute the product "Koke" when Coca-Cola was called for by a nickname, saying that the syrups were just exactly the same and that no difference could be distinguished by the consumer. (Objected to as hearsay and gossip.)

Mr. Callis states that he replied that such an action would constitute robbing the Coca-Cola Com-

(Deposition of Thomas Myer Murphy.)

pany and that he refused to do that.

I had a conversation with Mr. Vinson of the Vinson Drug Company, Texarkana, Ark., Dr. Vinson stated that the representative of the Koke Company asked him how his trade called for Coca-Cola—whether or not it was by its full name or by the names “Koke” and “Dope”; Dr. Vinson stated that he replied that the majority of his customers called for Coca-Cola by nicknames, “Koke” and “Dope,” and the agent then stated, “Then I have a product here you can serve them when Coca-Cola is called for by those names, and further no one will ever be able to distinguish any difference between this product and Coca-Cola.”

Dr. Arthur Levy, a druggist at Camden, Ark., stated that he was approached by an agent of the Koke Company and that this agent told him [457] that if he could distinguish any difference between the product of that Koke Company and Coca-Cola that he, the agent, would make Dr. Levy a present of his company's product and Dr. Levy refused this proposition, said that he was afraid of losing his Coca-Cola trade, saying that even if he couldn't distinguish any difference—he didn't make the test—there was a possibility of his trade being able to distinguish a difference and he would lose the trade he had built up by an honest policy.

While I was making the Consumers' Tests, at Rosenburg's Pharmacy, at Pine Bluff, Ark., a customer entered and said, “Give me a Coca-Cola made in Atlanta, Ga.,” and don't try to push any of that

(Deposition of Thomas Myer Murphy.)

damned 'Koke' stuff off on me." And the dispenser then told him he had not been serving "Koke" for a number of months and the customer then stated "If I had known that, I would have been your customer for a number of months; I was a customer of yours a number of months, and you started to pushing that 'Koke' stuff off on me, and I just quit you." Mr. Burton, the soda manager, stated to me that they had had the syrup of the Koke Company in their fountain because of the fact that Dr. Rosenberg was a stockholder in the company and was of course anxious to push the product of that company, and he said that he substituted that product for Coca-Cola, and said he lost so much of his Coca-Cola trade that he found it to his best interest to discontinue the substitution. He said the method used in the substitution was that a customer would come in and call for Coca-Cola, the dispenser would repeat after him "Koke?" and the customer would say "Yes"; and the dispenser then served him the product of the Koke Company.

I had a conversation with W. K. Soms, a confectioner at Brinkley, Ark. Mr. Soms stated that he was approached a couple of years ago by the representative of the Koke Company but does not remember the conversation, except in so far as the agent of the Koke Company tried to induce him to substitute the product of the Koke Company for Coca-Cola, and Mr. Soms further stated that he had received a number of letters from the Koke Company but didn't pay enough attention to them to remember the contents. [458]

(Deposition of Thomas Myer Murphy.)

I had a conversation with Dr. Moses Cooper, Walnut Ridge, Ark., Dr. Cooper stated that he was some time ago approached by a representative of the Koke Company and that this representative urged him to sell the product of the Koke Company when "dope" or "koke" was called for, stating that his company, The Koke Company, had as much right to the use of the words "koke" and "dope" as had the Coca-Cola Company.

Mr. Edward Angelo, of the Paris Candy Kitchen, Poplar Bluff, Mo., stated that he was approached some time ago by a representative of this Koke Company, and this representative urged him to sell the product of the Koke Company when the public called for Coca-Cola by the names "koke" and "dope" saying that Mr. Angelo could do that and be within his rights.

Based upon my calling for the product under the name "dope" and "koke," in my opinion the words "dope" and "koke" mean "Coca-Cola" as applied to a soft drink or carbonated beverage, and apply to "Coca-Cola," and, from the consumers' tests I have enumerated, the words "dope" and "koke" mean, and are applied to, "Coca-Cola." "Q. 92. I will ask you if what you have stated is true with the trade and with the consumer?" "A. That is the fact, that 'dope' and 'koke'—those names—are applied to 'Coca-Cola,' in so far as I have been able to find it, does." The basis for this opinion is the experience I have just enumerated. "Q. 94. Is that based upon the experience you have had, the names

(Deposition of Thomas Myer Murphy.)

‘dope’ and ‘koke’ are applied exclusively to ‘Coca-Cola’?” “A. To ‘Coca-Cola’ only.”

Cross-examination by Mr. LITTLETON.

I started with Candler, Thomson & Hirsch, September 5, 1908. They are the general counsel for the Coca-Cola Company. I obtained the money from Candler, Thomson & Hirsch to attend the University of Georgia but this is to be refunded when I leave school. I have been heretofore a clerk in the office of Candler, Thomson & Hirsch. I am employed now as special representative in this special work by the Coca-Cola Company. [459] I received my check signed by Harold Hirsch, agent, for the expenses of this trip I took to get up this evidence—the money came from the Coca-Cola Co. No, sir, they did not limit my expense account. I feel pretty kindly towards the Coca-Cola Company in so far as they are clients of Candler, Thomson & Hirsch. No, I have nothing against Judge Candler and I feel kindly towards Mr. Hirsch. Why, no, I do not necessarily look on any other concern that is manufacturing a drink similar to “Coca-Cola” as substitutes, unless it substituted for “Coca-Cola” and it has a dishonest practice concerned in it. Yes, I have heard some of these other concerns referred to as substituting concerns. Well, I have no first hand knowledge as to how many concerns there are making drinks similar to “Coca-Cola,” but what knowledge I have was gotten at a picture show at Camden, Ark. I saw an advertisement stating that there were 156. In so far as I now remember, I have

(Deposition of Thomas Myer Murphy.)

never seen the words “dope” or “koke” in any of the Coca-Cola Company’s advertising, or circulars, or affixed to any of its kegs, jugs or containers, in my travels about the country. In so far as I know these words “koke” and “dope” have never been used or employed by the Coca-Cola Co.

Redirect Examination by Mr. HIRSCH.

Yes, sir, I feel that the individual members of the firm of Candler, Thomson & Hirsch are my benefactors, and are aiding me in this life. Yes, sir, I would do anything in my power that was honest to aid them in their interest. I receive a check every month for \$25.00 up at the University of Georgia, which I apply to my living expenses. Yes, sir, Harold Hirsch has aided me individually in getting credit for my clothes.

Deposition of Earl Kinbrough, for Plaintiff.

EARL KINBROUGH.

Direct Examination by Mr. HIRSCH.

I live in Atlanta, Ga., and am soda-water dispenser for Tumlin Bros. I have been a soda-water dispenser for something in the neighborhood of ten years. We dispense at our fountain all the ordinary soda-fountain drinks. “Coca-Cola” is manufactured in Atlanta by Asa G. Candler. The name of his company is the Coca-Cola Company. Yes, sir; that is the drink that is advertised so extensively, it is advertised all [460] over the country. I couldn’t say exactly how long I have known “Coca-Cola”—ever since it has been in existence—I

(Deposition of Earl Kinbrough.)

couldn't say for how long—over ten years. Besides, “Coca-Cola,” the most frequent name that is used at my fountain in calling for it is “dope.” “Koke” is also used. When a person comes to my fountain and asks for a “dope” or “koke” I understand him to mean, and I sell, “Coca-Cola.” Yes, sir, I have seen “Coca-Cola” delivered from the Coca-Cola Company to my place of business. It comes in ten gallon kegs painted red. (There was no cross-examination of this witness.)

Deposition of John Mehos, for Plaintiff.

JOHN MEHOS.

Direct Examination by Mr. HIRSCH.

I live in Atlanta, Ga., where I have lived for the last seven years. I am in the cigar, soda-fountain and restaurant business. Yes, sir, I attend the soda-fountain myself. “Coca-Cola” is the main drink sold at my soda-fountain. It is manufactured in Atlanta by old man Asa Candler. The name of his company is the Coca-Cola Co. That drink is the biggest advertised in the United States, after the American Tobacco Co.'s products. I have known it for seven years, since I came south. You ask if any names are used at my soda-fountain besides “Coca-Cola” in calling for “Coca-Cola”; lots of people have nicknames—they come in and say “give me a ‘Coca-Cola,’ ” or “give me a ‘dope,’ ” you know. All of them mean “Coca-Cola,” you know. Yes, sir, I understand when a person comes to my soda-foun-

(Deposition of John Mehos.)

tain and asks for "dope" that he means "Coca-Cola."

Cross-examination by Mr. LITTLETON.

I believe all they ask for is "Coca-Cola," "dope" and "koke." I don't recollect any other names. You ask if I have handled anything else besides "Coca-Cola" of that same color, since I have been in business in Atlanta; root beer, you know, and sarsaparilla are drinks of that color, but then I have got nothing to do—it's a different drink altogether. Different taste, makes different foam. Oh, no, I have never had any other drink of a taste and color similar to "Coca-Cola."

Deposition of Clyde Park, for Plaintiff.

CLYDE PARK. [461]

Direct Examination by Mr. HIRSCH.

I live in Atlanta, Ga., and am with Tom Pitts' Cigar and Soda Company, at the soda-fountain. I have been engaged in this line of work for about eight years in Atlanta. At our fountain we dispense most anything—"Coca-Cola," lemon and lime, chocolate milk, root beer, ginger-ale. Yes, sir, "Coca-Cola" is a soft drink dispensed at our fountain. It is made in Atlanta by the Coca-Cola Co. Yes, sir; that is the drink that is advertised around town extensively. I have known of it 12 or 15 years. Yes, sir, there are other names used at our fountain in calls for "Coca-Cola" aside from the word "Coca-Cola,"—"dope" and "koke," that is about all, I think. "Q. 14. Do you understand, if a person

(Deposition of Clyde Park.)

comes to your fount and asks for a drink under the name 'dope' or 'koke' that they want 'Coca-Cola?' "

"A. Yes, sir." "Q. 15. If you would call for 'dope' or 'koke' would you mean 'Coca-Cola?' "

"A. I would." If I should walk down the street with a friend and he should say, "Let's go and have a 'dope' or 'koke,'" I would understand he meant "Coca-Cola." "Coca-Cola" is delivered to my place of business in red kegs. I have never seen it delivered in any other kind of kegs.

Cross-examination by Mr. LITTLETON.

I know that "Coca-Cola" is manufactured by the Coca-Cola Co. of Atlanta, Ga., because I have seen it manufactured, have seen it made in the vats. I buy it direct from the Coca-Cola Co.

Deposition of A. P. Blatsios, for Plaintiff.

A. P. BLATSIOS.

Direct Examination by Mr. HIRSCH.

I live in Atlanta, Ga., and am in the soda business. Yes, sir, I attend to the fountain. I have been in Atlanta about eight years. I dispense from my fountain "Coca-Cola," chocolate milk, lemon-lime—the different sodas. I have known of this drink "Coca-Cola" about eight years—since I have been here. Yes, sir, that is the drink that is advertised around town here. Yes, at my soda-fountain I have "Coca-Cola" called for by other names than "Coca-Cola," such as "dope" and "Candler's booze" or "Candler Highball," and all such stuff as that.

[462] When a person comes to my fountain and

(Deposition of A. P. Blatsios.)

asks for "dope" I understand that he wants "Coca-Cola."

Cross-examination by Mr. LITTLETON.

You ask if I ever hear it called for by any other names except those mentioned; well, I don't think about no more. They call it by most any kind of a name. I am a Greek.

(It is stipulated by and between counsel that Mr. C. E. Williams, Mr. Jack Weinberg, Mr. S. H. Crouch, George Poulos, John Poulos, George Prattes, Jas. Poulos, Dr. F. W. McRae, F. E. Walthour, were ready to testify, and that their testimony would be about the same as others who have testified in regard to "Coca-Cola" and the nicknames for "Coca-Cola.")

Deposition of George S. Lowndes, for Plaintiff.

GEORGE S. LOWNDES.

Direct Examination by Mr. HIRSCH.

I reside at 96 East 15th St., Atlanta, Ga. I have resided in Atlanta since January, 1869—about 45 years. Dr. J. S. Pemberton and I were always special friends,—that is, of course, after we became acquainted,—boarded at the same place for a long time—and after that my business relations with him was the purchase, with Mr. Venable, of a two-third interest, I think it was, in that "Coca-Cola" business. Yes, sir; Plaintiff's Exhibit #78 has my signature on it and is the paper that was given at the time of my purchase. It has been in my possession ever since, except when it was sent to Washington

(Deposition of George S. Lowndes.)

for record. I turned it over to you, I think, about two or three weeks ago. Yes, sir; that is my signature on Plaintiff's Exhibit #80. Yes, sir; I have had that paper also in my possession, and turned it over to you at the time I turned the others over to you. Those papers represent my purchase of the two-third's interest referred to. Of course, Plaintiff's Exhibit #79 followed the purchase, being an invoice of the stock of goods on hand, which I bought from them with this purchase there, but it followed those papers. As far as I can remember all the goods described in there were turned over and checked off. You can find the check marks on there. I have had Plaintiff's Exhibit #96 in my possession ever since the payment was made, it was a request of some money. [463] I turned it over to you within the last two or three weeks. The papers presented to me marked Plaintiff's Exhibits #78, 79, 80, and 96 are genuine papers and the signatures are genuine. Yes, sir, they were executed and delivered at about the date mentioned thereon. Yes, sir; Plaintiff's Exhibit #82 has my signature thereon. It is the genuine paper and the signatures are genuine. Yes, sir; I was at Venable's place of business frequently; now as to the manufacture of the whole thing: I have been in his place there where he was manufacturing "Coca-Cola," of course, I didn't go into details about it. I don't know anything about the details. I was simply financially interested—well, and naturally supposed to look after it somewhat. The reason Mr. Venable and myself

(Deposition of George S. Lowndes.)

remained together so short a while was that I found he wasn't handling it as a thing of that sort should be handled and I told him we had best separate—he buy or sell to me. That business was on the corner of Peachtree and Marietta Streets, where the Fourth National Bank now stands. After the sale, as shown by the exhibit you have just given me, to Walker & Dozier, I did not see the property, described in this bill of sale, any more. I left it to Mr. Venable to turn the property over to them—in other words I don't know whether we sold them the same property, because that might have been consumed,—that is, the stuff we purchased. But, whatever stuff we had there went with the material and stuff.

Cross-examination by Mr. LITTLETON.

At the time I speak of—at the time of my purchase and during the time I was connected with “Coca-Cola” it was not well known like it is today, of course not. No, sir, you couldn't say it was just in its infancy. Mr. Venable had been selling it for some little time and done considerable advertising. No, I do not know how many years. I don't know how long he had been selling it. I think we were getting orders from Montgomery, St. Louis and Griffin around there. Yes, I went to Pemberton's former place, 107 Marietta Street, the old Holland House, frequently. I went there frequently with Dr. Pemberton to taste the stuff he was making, but after our purchase I went there perhaps only to get this invoice—I mean to get the delivery of this [464] invoice of goods. You see Mr. Pemberton

(Deposition of George S. Lowndes.)

was sick at the time, in bed, and my recollection is that either I or Mr. Venable, or possibly both of us, had to go down there to get this stuff after he had had an invoice made of it to take it from there and haul it up to Venable's place. There was no more business done by them there after that because Pemberton was sick at that time and I don't think he ever got up again. My recollection is he never got up out of bed again. Well, the collections for the sales of "Coca-Cola," the whole matter of that sort, was in the hands of Mr. Venable, I didn't give any personal attention to the business myself. We did very little business, that's the truth, and it went into the concern to pay the expenses. Naturally, the expenses would have eaten up what little business we did, you know, because Venable was not giving it the attention he should and therefore I had the matter closed out. It was a very small business. I don't know what Mr. Candler done, it was naturally supposed that he did not exercise any sort of protectorate over this business or make the sales himself or collect the money for it. Yes, I knew something of my own business. I knew enough to know that Venable had to have help to carry it on, but Candler had no connection with Venable, he was not interested. During the time Venable and I had it Mr. Candler had no connection with it whatever. You ask if we got any tools which Dr. Pemberton had at 107 Marietta Street, except for what this invoice says; well, he had purchased some "Wine of Coca," he made several of those preparations, "Wine of Coca," and

(Deposition of George S. Lowndes.)

“Coca-Cola” and possibly “Globe Flower Cough Syrup.” I presume he had material, machinery and appliances down there for making those things, but I don’t know. The “Wine of Coca” was quite a different preparation from the “Coca-Cola”—had about the constituency of wine and was much thinner than “Coca-Cola.” It was made out of wine, and “Coca-Cola” was a syrup. I think possibly we did use some labels on our barrels after our purchase. I think there are some labels in that bill of sale to us, if I mistake not. I don’t know that I can describe those labels. I think they had a trademark of red on them—just a dash under the word “Coca-Cola.” I know the word “Coca-Cola” was always printed in red. [465] Dr. Pemberton had always done so and we followed it afterwards. While we didn’t have the preparations to make the scroll as it is now, we used a block letter to make that on the bill head. Yes, we used block letters—that is, we intended always to have a cut made, you know, and made in the shape that Dr. Pemberton had had it on his advertising and signs and things of that kind, but we never did get that far. You ask if the product was not known at that time as “Coca-Cola Syrup and Extract”; there was no “extract” to it as I ever heard of. You ask me to examine the contract marked Plaintiff’s Exhibit #78; well, now, it might have been called “Coca-Cola Syrup and Extract.” I know there is a good many extracts in it, but I don’t know that the preparation itself was called “Extracts.” Yes, sir; it is recited in that contract

(Deposition of George S. Lowndes.)

“Coca-Cola Syrup and Extract.” Yes, sir, I remember about that, but I don’t remember about the “extract” being attached to it. The fact is that the extract is very seldom ever connected with the syrup. A syrup may be made from extract, but the principal foundation of a syrup is sugar and not an extract—it has extract in it for flavoring and such things as that. We had “Lowndes & Venable” on our bill-heads, I remember—because, when I moved from our old office to the building over here I came across a batch of those letter-heads back in a drawer, and “Lowndes & Venable” are on there, as proprietors or something, I don’t just remember the wording of it. Well, no; I don’t know that I went down to 107 Marietta Street—the place where Pemberton was—but once, and that was on the delivery of this invoice. No, sir; Pemberton was not living there at that time—he never did—that was just his place of business. He was living either at Kirkwood or Edgewood, it was either one of those places. No, I don’t think Pemberton kept up with his business at 107 Marietta Street, I don’t think he ever got up from bed after that. He told me at the time he sold it, he was down in bed and was satisfied he wouldn’t get up, that was his only means of living. No, sir; I don’t know when he died, but it was a short time afterwards. I can’t remember when it was. I had a copy of the “Coca-Cola” formula, Dr. Pemberton furnished us with a copy. No, I never did make it from [466] that formula myself. I just looked

(Deposition of George S. Lowndes.)

after the financial end of it and looked to Venable to do the work of that character.

Direct Examination by Mr. HIRSCH.

One of the items on Plaintiff's Exhibit #79 is a stencil plate. It is either metal or cardboard with letters cut in it, to use a brush on to put on barrels and boxes. "RDQ. 3. Is that what you used to put the 'Coca-Cola' on boxes, barrels and kegs?" "A. I presume that was what that was used for—and for advertising purposes, also." Yes, sir; I reckon it was turned over to us in this way with the rest of the property for if it was checked off, it was there. I couldn't say that I did the checking myself, but I presume at that time it seems to have been done by somebody that received the goods.

Recross-examination by Mr. LITTLETON.

I have no recollection about that stencil plate except that it is just recited in the invoice. I know the preparation was known as "Coca-Cola," not "Coca-Cola Extract" in an advertising sense and as a soda-fountain drink. You ask if it was known as "Coca-Cola Syrup"; "Coca-Cola" was what they called it, of course, it was a syrup. You ask if it is not a fact that on the stationery that Mr. Pemberton had the name appeared thereon as "Coca-Cola Syrup"; is that bill made out on a printed head? I couldn't say about that. Well, I don't know what Mr. Pemberton did, of course. I couldn't tell whether he used the name on his letter-heads as "Coca-Cola Syrup" and called it by that name, but it is a syrup and it would be very natural for it to be

(Deposition of George S. Lowndes.)

called "Coca-Cola Syrup." At that time I was in the firm of B. M. Wooley & Company, a special proprietary medicine house which was making medicine exclusively. My recollection is that Dr. Pemberton sold the "Wine of Coca" to somebody or else moved away from his place of manufacture—I am not positive about that; it was afterwards manufactured as a separate preparation entirely from "Coca-Cola"—two distinct and separate preparations. One was a stimulant and the other was a syrup. You ask if "Coca-Cola" wasn't advertised as a good tonic medicine for headache and stimulant and if it isn't advertised today as "stimulating, refreshing" [467] and "invigorating"; well, invigorating, I believe, is the word they use. Yes, sir, it is stimulating—some of these preparations in it are stimulants, but the "Wine of Coca" was solely a stimulant just like a drink of whiskey. Well, whiskey is a pleasant, refreshing drink to some people—that's a question as to who drinks it. (Plaintiff here tendered and offered in evidence Plaintiff's Exhibit #96.)

(The following depositions were taken by the plaintiff at Mobine, Alabama, on August 2, 1914:)

**Deposition of Guy Henderson Upchurch, for
Plaintiff.**

GUY HENDERSON UPCHURCH.

Direct Examination by Mr. ROGERS.

I live at 200 St. Joseph St., Mobile, Ala., am a druggist and am president and manager of the Bienville Pharmacy, Inc., at Mobile, Ala. I have been

(Deposition of Guy Henderson Upchurch.)

connected with drug-stores for the past fifteen years,—for the past nine years in Mobile, and before that in Tuscaloosa and Carrollton, Ala. With the exception of about two years, I have operated a soda-fountain ever since I have been in the drug business and have operated one all the time I have been in Mobile. You ask me to name some of the drinks we dispense at our soda-fountain; well, I don't know about that, of course, we dispense "Coca-Cola" as the main thing. I couldn't say who makes "Coca-Cola," but I understand it is made by the Coca-Cola Company of Atlanta, that's where we get it from and where it is shipped to us from. Yes, sir; it is a product that has been extensively advertised. Yes, sir; I am about the fountain myself so that I can hear and notice the names used by people to designate the drinks they want, a majority of the time—sixteen hours a day. Now, I don't know that I can relate all of the nicknames for "Coca-Cola," but the two most frequent are "koke" and "dope." (Objected to by defendants because irrelevant, and not warranted by the pleadings. Overruled. Exception.)

Now, I couldn't answer, either, as to how frequently the words "koke" and "dope" are used as nicknames for "Coca-Cola" but I would say the larger per cent of the time—that is, the larger per cent of the calls come under the head of "dope" or "koke," or some nickname. When a man comes into my store and asks for a "dope" or a "koke" or says [468] "give me a 'dope,'" or "give me a

(Deposition of Guy Henderson Upchurch.)

‘koke,’ ” I understand that he means “Coca-Cola” and supply “Coca-Cola”—those are my instructions to all the men at the fountain. No, sir; I have never known of any instances where the purchaser has rejected “Coca-Cola” saying it was not what he wanted when we served it in response to such requests for “dope” or “koke”; on the contrary I have frequently asked the question as to what they mean and invariably they state “Coca-Cola.” Well, I don’t know exactly how long the nicknames “koke” and “dope” have been applied to “Coca-Cola” but I expect, as I stated in my letter, nine or ten years, and I expect longer than that, but I think I can safely say nine or ten years to my own knowledge. Yes, I remember a call I had from a representative of the Southern Koke Company of New Orleans about February 20, 1914. This representative did not talk to me personally; he talked to one of the men at the fount named John Graham. Yes, sir; I was about, so that I heard part of the conversation; I was at the cigar case, about ten or fifteen feet away. I don’t remember the conversation leading up to it, but the first thing I noticed, and I began to pay attention to, what he was saying, when he began to make a statement—a question, rather, of Mr. Graham at the fount, what they were serving when they had calls for “dope” or “koke.” Mr. Graham replied to him, saying that they were serving “Coca-Cola.” This agent then informed Mr. Graham that they had no right to do it—that they had a patent or trademark on the words “Koke” and “Dope” and that they

(Deposition of Guy Henderson Upchurch.)

had the exclusive use of it and that we had no right to serve "Coca-Cola" when "Dope" and "Koke" were called for. That was the substance of the conversation, that is all I heard at that time, I didn't pay any further attention to it. Later I received a letter from the Southern Koke Company, Ltd., of New Orleans, which is filed as Plaintiff's Exhibit #97. If that is not the letter I received, it is an exact duplication of it, it looks like the one I received, though. (Objected to by defendants unless the witness knows what it is. Overruled. Exception.) Then I will make the statement that that is the letter. Yes, sir; it is addressed to the Bienville Pharmacy. When I received this letter I immediately wrote the Coca-Cola Co., at Atlanta, as stated in the letter filed as Plaintiff's Exhibit #98. [469] Yes, sir. I received the sample of the Southern Koke Company's goods mentioned in the letter filed as Plaintiff's Exhibit #97. I saved it and have had it in my possession ever since it was received until Saturday, August 1st, on which date I exhibited it to you. Before delivering it to you I wrote my initials on it and sealed it up. The small jug filed as Plaintiff's Exhibit #99 is the jug received by me from the Southern Koke & Dope Company of New Orleans, as per their letter, and is the jug that I delivered to you on Saturday. The initials in the corner of the label, "G. H. U." are mine. The jug was sealed in my presence, having never been opened. When it was delivered to you it was in the exact condition as when it was received by me. (Plain-

(Deposition of Guy Henderson Upchurch.)

tiff here tendered and offered in evidence Plaintiff's Exhibits #97, #98, and #99). No, I have never had any other or further experience with any representative of the Southern Koke Company except the one to which I have testified above. I had a letter from them since that time, asking in regard to the sample that they had sent me and requesting me to give them a trial order for some of it, and I misplaced that letter. Other than that I have had no further business dealings or communications with the Southern Koke Company, Ltd., of New Orleans.

(The introduction of Plaintiff's Exhibit #98 is objected to because incompetent in that it is merely a carbon copy of a letter written by the witness to the Coca-Cola Co. Objection overruled. Exception.)

Cross-examination by Mr. LITTLETON.

No, sir; I have never handled any other beverages similar to "Coca-Cola." I have never handled any other cola beverages except "Coca-Cola." No, sir; I have never seen any other cola beverages bought or sold, but I have seen a good many of them exhibited by different representatives that called in. I have never seen any of them bought or sold on the market. Yes, sir; I know some of the names by which the people call for these other drinks because I had letters from the manufacturers telling me what they were. No, sir; I don't know what names the public use in calling for these beverages because I never had any calls for them. I don't know whether the public calls for these beverages under the names

(Deposition of Guy Henderson Upchurch.)

of "koke" or "dope," but I know my trade; you can ask them [470] invariably what they want and they say "Coca-Cola." "XQ. 11. Sure, but you don't handle anything but 'Coca-Cola'?" "A. No, I don't handle anything but 'Coca-Cola.'" The color of these other cola beverages which I saw was similar to "Coca-Cola"—they are similar in color to "Coca-Cola." It is pretty hard for me to recall right at the present time the different cola beverages I have seen which are similar in color to "Coca-Cola." I have seen samples of "Afri-Cola" and of "Dope" and "Koke" and I have seen samples of others which I can't recall at the present time, one was made in Birmingham, I think, that I have seen samples of, but I don't remember the name of it. I don't know whether it was "Rye-Ola" or not, I think that was the name. I have seen samples of "Wise-Ola," that is made in another place—I don't know whether that is made in Birmingham or not, but I have seen samples of it. No, sir; I have not seen any of "My-Coca," "Wine of Coca," "Lemon-Cola" or "Ala-Cola." I have not tasted any of these other beverages nor have I seen any of the receptacles or containers in which they are shipped to dealers. I don't know what kind of receptacle they are shipped in except the sample which the Southern Koke Company, Ltd., shipped to me, being Plaintiff's Exhibit #99. Why, I don't know what some of the other names are by which my customers call for these drinks. I think that states the majority of them, I don't recollect any other names. Of

(Deposition of Guy Henderson Upchurch.)

course, I know that there are others, but it is infrequent, I didn't pay much attention to them. Yes, sir; I have had people come in and ask for "Morning's Morning." I have heard of them asking for "a shot" and "a shot in the arm," but I have never had them call for it. No, sir; I have never heard them say "give me a glass of poison" at the soda-fountain; I have heard them come in at the prescription case and say that. I happen to be up here this morning to testify in this case at the request of Mr. Edward Rogers here, the attorney for the Coca-Cola Co. I wrote that letter filed as Plaintiff's Exhibit #99 to the Coca-Cola Company for my own information and protection. I mean by that that I had no money for any suits the Southern Koke & Dope Company might want to bring,—that they had a right to that name and if it was necessary for me to serve it in order to keep from substituting, that I wouldn't want to serve it. [471] In other words, I intended to serve what the people wanted and that is why I wrote that letter, to find out where I stood, and I really said it was my information and belief in all good intentions that when "dope" was called for that they were calling for "Coca-Cola" and I didn't believe in giving a man something else that he doesn't want. You ask if I had discussed this point with Mr. Rogers before taking the stand; yes, sir, it was conversed with us; he talked about it, he asked what I knew about it; yes, sir. No, sir; it was not he who told me that the object of my writing this letter was to be protected in the distribution

(Deposition of Guy Henderson Upchurch.)

of the stuff; all that was done of my own accord. I didn't know the gentleman at the time that letter was written. I am 34 years old and am a druggist but I have no relation with the Coca-Cola Company other than that I have been serving their stuff a number of years. That's the only relationship I have with the Coca-Cola Company. When I got the inquiry from the Southern Koke Company I thought it was my duty to communicate it to the Coca-Cola Company; it was one of their products concerned and I was the other party concerned. When I got the letter I sent the original letter to them so they could see what I was driving at. Yes, sir; when I got the sample of "Koke" I felt that I had to seal that up and preserve it for use. I sealed it up because I wanted to keep it, because I didn't know what disposition to make of it; I intended at one time to send it back to the Southern Koke Company but decided later not to do it. I sealed it at the request of this gentleman, Mr. Pierce. I don't know who he is, he is a representative of the Coca-Cola Co.—attorney. No, he was not there when I got that bottle. I had had it in my possession longer than two weeks, but I don't think it was as long as three months, before I saw him. Yes, sir; I have had it in my possession for that length of time, I only sealed it when Mr. Pierce suggested sealing it, but the cork had never been drawn before that time so that that seal was put on after we talked about it. Yes, sir; I know what I am up here for—up here to give testimony in regard to this case. I don't know whether

(Deposition of Guy Henderson Upchurch.)

you call me a witness in behalf of the Coca-Cola Company or not, I suppose you would. Yes, sir; I am up here and know that the Coca-Cola Company is ready to sue "Koke & Dope" and things of that kind. [472] I understand that, but that's not my motive, my motive is up here trying to find out as to whether I have the right to serve "Coca-Cola" when "dope" and "koke" are called for. I have been in touch with the Coca-Cola Company in regard to the testimony I was to give from the date of my letter—rather from the date of their letter. No, sir; all of my customers do not call for "Coca-Cola" as "dope," according to that letter—the larger per cent of them. Yes, sir; we have a few more customers than ten or twenty. Yes, sir; I know all these customers calling regularly and so far as I can ascertain when they call for "koke" or "dope" they want "Coca-Cola." I don't know what relation "Coca-Cola" has to "dope." Usually the term 'dope' means a thing like morphine, cocaine, things like that. "XQ. 77. So, when a man calls for 'dope' you know he wants 'Coca-Cola'?" "A. At the soda-fountain, yes, sir." No, sir; I have never heard of a "dope fiend"—oh, yes, I have heard of a "dope fiend," plenty of them, "coke fiends," "morphine fiends"—several others. No, sir; "coke" does not necessarily mean cocaine; it is applied to morphine, cocaine or any other habit forming drug. Yes, sir; when a man calls for "coke" I know he ordinarily means morphine or cocaine or some other habit forming drug—that is, if he was at the prescription

(Deposition of Guy Henderson Upchurch.)

counter, I would think so, but if he is at the soda-fountain and calls for "dope" or "koke" I would think he wanted a drink. The reason why I would think he wanted a drink is because he came to a place to get a drink and we don't serve cocaine or morphine at the soda-fountain. The two names "dope" and "koke" are inseparably connected in my association with "Coca-Cola"—in my estimation they mean "Coca-Cola"; yes, sir. If I was at the prescription case, or in the drug department, I would think they meant some habit forming drug, such as cocaine or morphine. Yes, sir; I think that as a result of long experience as a druggist. I know that cocaine fiends call for "cocaine" or "dope." You say you suppose that when I first heard the word "dope" or "koke" applied to "Coca-Cola" that I thought it was because it had cocaine or some extract of cocaine in it; well, I didn't know why it was called that. The only thing I knew it was a nickname for "Coca-Cola." No, I do not claim ignorance of the fact that for many years it was generally supposed [473] that "Coca-Cola" had cocaine in it. A great deal of the public supposes that now, so far as that part of it is concerned. You ask if the general public believes that it is cocaine or some mixture of cocaine that they are drinking; well, not the general public, but some part of the general public; however, there are a few people that have that idea—I frequently have the argument that it contains such things. No, they are not the people that call for it by the name of "koke"

(Deposition of Guy Henderson Upchurch.)

or "dope"; other people call for it as well as they do. Those who argue that don't drink it at all, it is those who drink it that call for it by those names. My information in regard to that is gotten from the people; I have asked a good many as to what they thought it contained and they argued with me that they thought it contained those things. What do I think is in it? I have no idea. Yes, sir; I am selling something I know nothing about, we do that frequently. If I tried to know what was in everything we would be in the insane asylum in a couple of weeks because we have patent drugs, patent beverages, and patent everything that we don't know anything about, but which we sell in the commercial world. Yes, sir; we have only one drink "Cocoa-Cola." Yes, sir; I have had a good deal of curiosity, in the years I have been selling it, as to what it contains, but I have never found out what is in it. Some of my customers believe that "Coca-Cola" contains something akin to "dope" or "koke"—cocaine or dope—and some don't. No, sir; as a druggist I don't handle things that are dangerous to the public without knowing something about them, not exactly. I don't consider "Coca-Cola" dangerous to the public, because in my experience having dispensed it as long as I have, my own observation has taught me that. No, sir; I have never followed up the "Coca-Cola" drinker to see what effect it has on him, not individually. No, sir; I don't know anything about "Coca-Cola," except just generally. I just sell it blindly over my

(Deposition of Guy Henderson Upchurch.)

counter because it is sent there to make a profit and there is a demand for it. No, sir; I would not sell anything there is a demand for that I could make money out of; I had a bountiful sale on morphine and cocaine about nine years ago, when I first came to Mobile and that is one of the first things I cut out, and I made a good deal of money out of it. There was no law against it at that time. [474] I but that out because I know that cocaine and morphine were injurious to the people. No, I don't know that I was liable to prosecution, civilly, if not criminally, for selling it. Mr. Pierce asked me about my testimony in this case on his last visit to Mobile—I will have to ask Mr. Pierce when that was. Then I think he saw me Saturday and I think he was in the store also Friday, I am not quite positive; I was thinking two days, I don't know which it was. Yes, sir; he has talked to me about this thing.

Redirect Examination by Mr. ROGERS.

No, sir; I have not testified to anything at this hearing to-day that was suggested either by Mr. Pierce or by you. The little jug was sealed Saturday, August first, I believe. Yes, sir, it was sealed immediately before it was taken from my store. "RDQ. 4. You refer to certain other beverages, counsel designating them as 'cola' beverages,—among others, 'Afri-Cola'; I wish you would state how these have been offered to you—they have been offered to you as drinks that are going to be ad-

(Deposition of Guy Henderson Upchurch.)

vertised and a demand created, or have they been offered to you as substitutes for 'Coca-Cola'?" "A. Why, cola drinks have been offered to me as substitutes for 'Coca-Cola' more than any other kind. I had one man at one time—I don't remember the name of the Company he was with, whether 'Afri-Cola' or some other Company, came here to the store and asked me the question if I meant to serve 'Coca-Cola' when 'Coca-Cola' was called for. My reply was I did, and I expected to do it, and if I expected to steal a nickel from a man and take a man's money without giving him what he called for, that I would quit the drug business." "RDQ. 5. The letter you have referred to, and which was offered in evidence as Exhibit #98, was written on your own accord and without any suggestions from the Coca-Cola Company, was it not?" "A. Absolutely was; yes, sir." In a majority of instances those who argued about "Coca-Cola" containing injurious drugs were people who do not drink "Coca-Cola."

Deposition of Dave S. Bauer, for Plaintiff.

DAVE S. BAUER.

Direct Examination by Mr. ROGERS.

I am 42 years of age, reside in Mobile, Alabama, and am in the [475] retail drug business here in Mobile, at North Constitution and Dalton Streets. I have been engaged in this business for twenty odd years, during which time I have handled and dispensed "Coca-Cola." The Coca-Cola Company

(Deposition of Dave S. Bauer.)

of Atlanta, Ga., makes "Coca-Cola." Yes, sir; I am about the soda-fountain so that I can hear what names the people use when they ask for drinks. Well, I have heard "Coca-Cola" named "dope," "koke" and other names. I think people use nicknames for "Coca-Cola" more so than they call for "Coca-Cola." When a man comes into our store and asks for a "dope" or a "koke" we have always understood that he wants a "Coca-Cola" and have always supplied "Coca-Cola," until very recently, and now we make them specify just what they do want. We first ask the question do they want "Koke," or do they want "Coca-Cola"? No, sir; I have never had a purchaser to refuse "Coca-Cola" when it was served to him in response to a request for either "koke" or "dope" on the ground that "Coca-Cola" was not what they wanted. You ask how long I have known the nickname "koke" and "dope" familiarly applied to "Coca-Cola"; seems to me always, since I have been around the soda-fountain, 25 or 26 years—24 years to be exact. Yes, sir; I recollect a call by the representative of the Southern Koke Company of New Orlenias in the latter part of the year. Two gentlemen came to see me. One introduced himself as the representative of the Southern Koke & Dope Company and said he had a soda-fountain beverage that he thought would interest me. I just referred him to my head soda water man and he said he wanted to talk to me about it, said he had a cola drink that he could replace "Coca-Cola," that we could serve at the foun-

(Deposition of Dave S. Bauer.)

tain and save money on the "Coca-Cola," and the public or no one could tell the difference, and save at least fifty cents a gallon on it. When I informed him that I didn't use any substitutes for "Coca-Cola" he told me that they had a copyright on their stuff "Koke" and "Dope," and that when the trade called for it that way I was expected to serve that, otherwise I would be subject to prosecution. He said that he had a copyright on the names "Koke" and "Dope" and argued that if people called for a beverage at a soda-fountain under the name "Koke" or "Dope" that is what we would have to serve, but if we served any other cola drinks in that place we would be subject to prosecution. The man [476] I had this conversation with left a card. The card filed as Plaintiff's Exhibit #100 came to me by mail advising me that their representative would be here. The man whom I have just spoken of presented me a card similar to this, with the exception, of course, that the writing was not on it. You ask me to state if this representative of the Southern Koke Company about whom I have testified, and who had this conversation with me, said anything about the possibility of selling his product on calls for "Coca-Cola"; in reference to that, he told me that if I wanted to serve "Coca-Cola" at my soda-fountain, and serve "Koke" and "Dope," that it would be necessary for me to have two casks, to keep out of trouble, that if I served "Koke" and "Dope"—at least if I served "Coca-Cola" when "Koke" and "Dope" was called for,—

(Deposition of Dave S. Bauer.)

I was serving something the customers didn't ask for and was liable to prosecution, that they had the copyright under that name. You ask if anything was said about substituting "Koke" for "Coca-Cola"; that was one of the first things that he told me, that I could serve "Koke" and "Dope," and that the calls for "Coca-Cola" the public wouldn't know it and couldn't tell the difference. I did not undertake any proposition from this representative. You ask if anything was said about the product he was selling which he denominated "Koke" and "Dope" being cheaper than "Coca-Cola"; if anything was said to me about my being able to make more money in the sale of his products than I would in the sale of "Coca-Cola," and if that was held out as an argument for me to purchase; to all of these questions I answer—yes, sir. Well, that is pretty much what he said, I think, after first trying to induce me to buy his syrup, as I understood it, as a substitute for "Coca-Cola," and after I informed him that I never sold a substitute for "Coca-Cola" and never expected to, he then told me, "Maybe you don't know it, but our syrup is copyrighted. You have more calls for this drink in our name than you do under the name of 'Coca-Cola.' Now, if you serve 'Coca-Cola' when our drink is called for, why, you are subject to prosecution"; and I said, "Well, I am going to see that they do not serve it." He says "How are you going to do that?" Then I showed him a sign we had on the fountain that said, "If you want 'Coca-Cola,' please call for it by its

(Deposition of Dave S. Bauer.)

correct [477] name, that is the only cola drink we serve at this fountain." Then, in addition to that, that when a customer calls for "Coca-Cola"—that is, when they call for "koke" or "dope"—to tell them they want "Coca-Cola," and, if they raise any question to our question of their intelligence, we would simply show them the card and let them know there are two different drinks. Well, he said, "You are busy and I will see you later," and that was the end of the conversation with him. Previous to that time I had given instructions to my soda dispensers to make the inquiry of purchasers who asked for "koke" and "dope" if they wanted "Coca-Cola." When they say "Give me just what we ask for," we say, "Well, we don't carry anything but 'Coca-Cola.' " In a good many instances they state, "Look here, I didn't come in here to be jollied, I came in here to get what I want." The dispensers would then say, "We just don't serve anything else but 'Coca-Cola,' " and this card would be shown to the purchaser, and in a majority of cases the fellows would just tell what they wanted. The card referred to is the one marked "Plaintiff's Exhibit #100." Of course, I watched this pretty close to see what effect it would have on my business, and visited my soda-fountain more often than usual, and, whenever I seen that card shown them, without one exception I heard the reply, "Say, I want 'Coca-Cola.' I didn't know there was two drinks, I didn't know there was another one like

(Deposition of Dave S. Bauer.)

that.” (Plaintiff here tendered and offered in evidence the card marked Plaintiff’s Exhibit #100.)

Cross-examination by Mr. DART.

No, sir; you didn’t understand me to say that I carried no other soft drink but “Coca-Cola”; I said no other cola drinks. No, sir; when the words “dope” and “koke” were pronounced to me originally they did not convey any meaning to me and didn’t suggest anything to me,—nothing more than a common name used for anything that is dopy, or contains an opiate, something of that sort. These are names that are used under all circumstances. They are often applied to medicine, whether it contains morphine or not. May be some people getting a “dope,” say of ginger, may go to a doctor and he may give them a prescription containing anything, and they will say, “I have been to the doctor,” and they will carry it to the drug-store and claim, “he gave me some medicine,” [478] and speak of the ingredients of the medicine as containing a “dope.” I would judge the word “koke” in general use to be applied as the word “dope,” it always struck me that way. Of course, it depends entirely just how the statement is made—users of cocaine have been designated as “coke fiends” and sellers of cocaine have been designated as “coke sellers.” Yes, sir, the names “koke” and “dope,” as they bore themselves in on my mind for many years, indicated what I have just said,—a medicine or a dope of some kind—if it had in it the element of dope, or

(Deposition of Dave S. Bauer.)

morphine, or any drug of that kind, that is what it meant, any drug not specially a drug of, that kind, any kind of drug. Yes, sir, when the word "koke" or the word "dope" was originally used with me in regard to "Coca-Cola" it signified something of that kind. I have heard people say that "Coca-Cola" contained cocaine, but I have heard a good many people that knew better. Yes, sir; I have heard a good many people who have always contended it had cocaine in it, or some extract of cocaine. That was the general impression for years and years. I think that effect has been done away with now; I think different publications, literature, and one thing and another, has offset that impression. I suppose any of the public that keep up with such matters would suppose that it is free from such ingredients now, since the Pure Food and Drugs Act went into effect, otherwise it would have to be so stated on whatever container it went out in. I think the general impression was before the Pure Food Law went into effect that "Coca-Cola" contained possibly a principle of cocaine. No, sir; it was not perfectly proper for those who used "Coca-Cola" to call it by that name—"koke" and "dope"—and it was not sold leaving that particular impression. I take it that the public calling for "dope" or "koke" would simply be using a nickname as they would for any other beverage, or any other stimulant, they might want to drink. In my opinion, the public knew before the Pure Food Law went into effect that there was no cocaine in "Coca-Cola," because they had been

(Deposition of Dave S. Bauer.)

educated to the fact for years—advertisements and one thing and another, and from personal statements that the only stimulant in “Coca-Cola” was caffeine; and I know we have made the statement for years, and I have heard it for years, that “Coca-Cola” contains the same percentage of caffeine to [479] a glass as a cup of coffee would contain; that’s as far as I ever thought it was druggy, you know. The name “koke” implies coca, and cocaine is derived from coca leaves, but it doesn’t necessarily follow that if “Coca-Cola” has no coca or anything of that kind in it, that it isn’t the correct name of the article, because in the manufacture of any pharmaceutic or chemical product you can eliminate any part of the chemical substance you see fit to in the process of manufacture. However, I know nothing of the manufacture of “Coca-Cola.” No, sir; it was not originally understood that “Coca-Cola” meant an ingredient or mixture in which coca leaves formed a part, and I never understood it that way. I have always understood “Coca-Cola” was a syrup made with some coca leaves and from cola nuts, and I still understand it that way. I understand that from the name of the product and from information I get in the drug business. I was in the drug business when “Pemberton’s Wine of Coca” was put out years ago, and I was informed that they sold their formula to other parties and that they then manufactured a syrup, when “Pemberton’s Wine of Coca” was sold, as an extract of coca leaves—that it contained no dope of any kind. No, sir; I didn’t get my under-

(Deposition of Dave S. Bauer.)

standing as to the ingredients of "Coca-Cola" from Pemberton; I suppose I got it from Pemberton's salesmen, when I was a boy, and from the name "Coca-Cola." Yes, sir, I have seen the Coca-Cola Company's label which contains a picture of coca leaves and cola nuts, but I haven't noticed it enough recently to be able to tell you whether or not they still use it. However, that was the label they used for years. Yes, sir; when I first heard of "Pemberton's Wine of Coca," years ago, it had a considerable sale. It was in the store I worked in and had considerable sale in that store. I sold a great deal of it myself. Yes, sir; that was sold to the consuming public. I don't remember the labels that were on it. I can't remember that the label bore the statement that it was made from Erythroxyton coca and cola nuts, or from the extract of erythroxyton coca and cola nuts, but it was generally understood that it was composed of those ingredients, and it was so understood for sometime before "Coca-Cola" came out. Yes, sir; I have heard people ask for cola beverages besides "Coca-Cola." [480] I have heard them ask for "Gay-Ola" and for "Carre-Cola"—that last is manufacured in Mobile by D. Carre Company—I don't think of any other. "Carre-Cola" is the same color as "Coca-Cola." I don't know whether or not there are as many as 150 cola beverages on the market, but I say I know of some of the 150, meaning thereby a large number. I have no idea how many I know of. All of those that have come under my observation are the same color as "Coca-Cola." I

(Deposition of Dave S. Bauer.)

couldn't tell you whether or not they all taste similar to "Coca-Cola," because I have never tasted any except the "Carre-Cola." Yes, sir, I guess I have heard these other beverages called for by the purchasing public. I don't think I have heard any called for except "Carre-Cola" and "Gay-Ola. No, sir; I don't know the names the public use in calling for these numerous cola beverages. There are a number of soda-fountain beverages, some of which may be a cola drink and may not be a cola drink, and you may refer to one of them. I understand you to mean by cola drink, a drink that is similar in color, taste and appearance to "Coca-Cola." Any recognized cola drinks, or any that have been advertised, are the only ones I have heard the public call for. I know there are quite a number of them, among which are "Afri-Cola" and "Gay-Ola." I don't know about "Ala-Cola" or "Ko-Nut" or "Wise-Ola." We don't handle "My-Coca." "Chero-Cola" doesn't make a similar drink—the "Chero-Cola" I have seen doesn't make a similar colored drink as "Coca-Cola." The difference in color is that "Chero-Cola" is a considerably lighter brown and so much lighter that I could readily tell it at a glance. I am speaking of the soda-fountain beverage I have seen by the name of "Chero-Cola." I don't know who sells it here in Mobile. I have also heard the public ask for "Lime-Cola." That is a soda-fountain drink put up by Parke-Davis & Company of Detroit. I have heard that bought and sold on the market, and I have sold it, but I don't know who else sells that here. I don't re-

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member the color of that drink, it has been sometime ago since I sold it; it isn't any way similar to "Coca-Cola," though. I would say that it differs from "Coca-Cola" in the respect that the lime flavor predominates. I don't believe I could tell you the difference between it and "Coca-Cola" in color. [481], I couldn't tell you whether or not it is about the same color as "Coca-Cola." It has been about ten years since I handled it. That was sold as "Lime-Cola," not as a substitute for "Coca-Cola." I have never heard of any one asking for "Wise-Ola," "Ala-Cola," "My-Coca," "Rye-Ola," "Afri-Cola," or "Ko-Nut," except what traveling salesmen have told me. No, sir; I don't know the names by which the public asks for these drinks or for drinks of that class. I don't know whether they ask for those drinks by the names of "dope" and "koke" or not. No, sir; I don't know whether "koke" and "dope" are also nicknames for those drinks. I know that "Coca-Cola" is manufactured by the Coca-Cola Company of Atlanta, Ga., because the label on the barrel says so. No, sir; although you have presented me with the card filed as Plaintiff's Exhibit #100, for inspection, I cannot tell you the name of the man who discussed with me the substitution of "Koke" syrup for "Coca-Cola" syrup. He gave me his name, but I have forgotten it. You ask if it was Mayfield; that I couldn't tell you, it may be Mayfield, but I have forgotten. I doubt if I could remember the man if you were to describe him. I don't remember his name or anything by which I can describe the man. I have been in the

(Deposition of Dave S. Bauer.)

drug business between 24 and 25 years, during which time I have been dispensing at my soda-fountain root beer, sarsaparilla, and drinks of that kind. Sarsaparilla has been on the market to my knowledge since I have been in the drug business and longer, as long as the United States Pharmacopoeia has been in existence. I should say it has been in existence fifty years, if not longer. The color of the soda-fountain sarsaparilla syrup during this time has varied according to the strength used by each particular dealer. I might make my sarsaparilla syrup thicker than anybody else, and mine, of course, would be a darker color. However, it has all had the same general color, which is a brown. I have made sarsaparilla myself, and have colored it with brown sugar or caramel coloring. Yes, sir; as long as I have known sarsaparilla syrup as a soda-fountain beverage it has been colored with caramel coloring. Yes, sir; I have also handled root beer for the same number of years. It has been known longer than I have been in business and it has always had that same dark brown color. I should think that "Coca-Cola" and sarsaparilla are not the same color. In [482] general coloring they are alike—as a matter of fact, both of them have a dark brown color, and so has root beer. Yes, sir; caramel is recognized as a standard brown coloring matter for syrup and is in universal use and was in such universal use when I was a boy. I am 42 years of age, and caramel has been used as a coloring for syrup ever since I can remember, by every druggist that I have come in contact with. I

(Deposition of Dave S. Bauer.)

have never handled "Coca-Cola" in bottles. Mine is a fountain dispensary altogether.

Redirect Examination by Mr. ROGERS.

No, sir; "Pemberton's French Wine of Coca", which I spoke of a moment ago, was not a soda-fountain beverage; it was put up in bottles—my recollection is about three-quarters of a pint. No, sir; when I first heard the name "Coca-Cola" I had never heard that phrase,—“Coca-Cola”—before. Yes, sir; when I first heard it in connection with the product of the Coca-Cola Company, it struck me as a new phrase.

Deposition of Edwin Roy Albright, for Plaintiff.

EDWIN ROY ALBRIGHT.

Direct Examination by Mr. ROGERS.

I am a druggist and reside at Mobile, Ala. I am a member of the firm of Albright & Wood, which firm operates two drug-stores in Mobile, one at Dothan & Jackson Sts., and the other at Government & Royal. We have been in business two years and six months and have soda-fountains at each of our stores. We handle "Coca-Cola." The Coca-Cola Company, I guess, of Atlanta, makes "Coca-Cola." Yes, sir; to a certain extent I am about the fountain myself so that I can hear people when they come in and ask for drinks and so that I can understand and know what names they use. Yes, sir; I know of nicknames for "Coca-Cola" that are commonly used; namely, "dope." Well, I have heard "koke," yes, sir, but not as frequently as "dope." When a man comes into my soda-fountain and says, "give me a 'dope,' "

(Deposition of Edwin Roy Albright.)

or give me a "koke," I understand that he means "Coca-Cola" and supply "Coca-Cola." I have never had it rejected on the ground that it was not what was wanted. [483] During November, 1913, I had an interview with a representative of the Southern Koke Company of New Orleans. No, sir; I don't remember what the man's name was. You ask was it Patton. Yes, sir; that's it, Patton. Well, he wanted to sell a syrup called "Dope." I told him I didn't handle any substitutes for "Coca-Cola" and he claimed it was not a substitute. He said that it was to be supplied when people asked for "dope" and that they had the name "Dope" copyrighted, etc., and that I had just as much right to give a man "Dope" when he asked for "Dope" as I did to give him "Coca-Cola" when he asked for "Coca-Cola" and he based his argument on these facts—he didn't try to sell it as a substitute for "Coca-Cola." He also said that his company had the name "Koke" copyrighted and that I should give my customers "Koke" syrup when they asked for "Koke." He said that we should have two containers and when they asked for "Koke," give them "Koke" and when they asked for "Coca-Cola," give them "Coca-Cola," and when they asked for "Dope" to give them "Dope." Dope and Koke were the same. He said that it was unfair competition to sell people "Coca-Cola" in response to requests for "Koke" and "Dope" and that dealers who served "Coca-Cola" for "Dope" would be liable to prosecution at the suit of the Dope Company, which was the Com-

(Deposition of Edwin Roy Albright.)

pany he was representing. I told him we had more demand for "Dope" than we had for "Coca-Cola" and I told him we always supplied "Coca-Cola" when "Dope" was called for. His argument was that they had the names "Dope" and "Koke" copyrighted and that a dealer who supplied "Coca-Cola" for those articles when they asked for "Dope" and "Koke," would be liable to prosecution, that they owned those names the same as the "Coca-Cola" people did "Coca-Cola." Well, we bought two barrels of the product of the Southern Koke Company, Ltd., the price of which was less than the price of "Coca-Cola" syrup—that is, it was cheaper to us. The paper marked Plaintiff's Exhibit #101 is a carbon of a sales slip bearing at the top the name Southern Koke Company, Ltd. That slip represents one of the purchases we made—I don't know whether it is the first or second. Patton also said something about some stock, but, really, I have forgotten what the stock was and how it was [484] to be given, etc. Yes, sir; there was to be issued to purchasers of "Koke" and "Dope," the produce of the Southern Koke Company, so many shares of stock in the Southern Koke Company with each barrel,—that is about all I remember about that stock proposition. Yes, sir; I received the product "Koke" of the Southern Koke Company and sold it at the fountain in response to requests for "Koke"—I had two jars. When people asked for "Koke" I gave them "Koke." Yes, sir; by "Koke" I mean the product of the Southern Koke Co., and when they asked for "Dope" I gave them

(Deposition of Edwin Roy Albright.)

that—that is, the product of the Southern Koke Co., Ltd. On January 17, 1914, I wrote a letter to the Southern Koke Company at New Orleans, a carbon copy of which letter is filed as Plaintiff's Exhibit #102. In reply I received a letter dated New Orleans, January 19, 1914, on the letterhead of the Southern Koke Company, which is filed as Plaintiff's Exhibit #103. (Plaintiff here tendered and offered in evidence Plaintiff's Exhibits #101, 102, 103.) Why, I should say I have known the nicknames "koke" and "dope" to be applied to "Coca-Cola" about eight years—eight or ten years.

Cross-examination by Mr. DART.

I wanted the stuff shipped without the labels, because I didn't care for my customers to know that I was using the stuff at all; if they knew it, they might use it in an unfair way to say that I was using it instead of "Coca-Cola." No, I did not serve it in the place of "Coca-Cola." Yes, sir; it did come to me without labels. I don't handle it any more. Yes, sir; I felt that when this salesman said we were handling it he violated our confidence. I didn't like that and I decided I did not care to use anything but "Coca-Cola." No, sir; I did not know a thing about this lawsuit at the time I wrote the letter. No, sir, I was not afraid of a lawsuit, I didn't feel like I was violating any law, because I didn't serve it as "Coca-Cola,"—I served it as "Dope." I didn't care to incur the ill-feeling or enmity of the Coca-Cola people, but I can't say that that was one of the things on my mind. It was my own feeling in the matter. I

(Deposition of Edwin Roy Albright.)

didn't think I was doing right. I know that I drink "Coca-Cola," and have for years, and did before I went in business on my own account, and when I went into a place and asked for [485] "dope" I expected "Coca-Cola." Well, I couldn't say that the word "dope" when used in regard to "Coca-Cola" would signify to me a drink that was druggy or had a drug in it. I don't know why anybody should call a straight drink that had no drug in it "dope." I have heard people call for cigarettes even by the name of "dope." I have had people come in and ask me for a pack of "dope." I wouldn't understand "dope" to signify anything that has become a habit with people, not in a case of that kind, under other circumstances, it would, yes, sir. No, sir; the word "dope" would not necessarily indicate that there was something in the particular thing they were calling for that was stimulating that they had to have. "Dope" meant nothing more to me than the article that they wanted. When a man calls for "dope" without expressing anything else, I would think he wanted "Coca-Cola." I don't know why, but it has just been customary at soda-fountains—at our fountain. No, sir; it was not because "Coca-Cola" was recognized as having some element of cocaine in it, or some "dope" in it. Well, there is a general impression, yes, sir, that it has those things in it; I have had people remark those things in the store. That impression is probably still in existence, I couldn't say. Yes, sir; I know the general impression is that "Coca-Cola" had something in it which lead to the

(Deposition of Edwin Roy Albright.)

use of the word "dope" as an alternative for "Coca-Cola." No, that's not how I recognized what they wanted. I said when a man asked for "dope" I understood that he wanted "Coca-Cola." No, sir; I didn't ask him, that's my understanding of the word. When a man comes to a soda-fountain and asks for a "dope," I understand that he wants "Coca-Cola," not something that is "dope." Yes, sir; that he wants a dope that is called "Coca-Cola." You ask if I recognize it as his particular "dope"; I recognize it as the drink that he wants. I have not heard it called "koke" as often as "dope." I very seldom ever hear it called "koke" any more. No, sir; "koke" did not pass out of general use long ago; I hear it occasionally now. The word "dope" is used frequently, even, possibly, as many times as "Coca-Cola," but the word "koke" is used very infrequently. No, sir; we don't handle any other drink now except "Coca-Cola," and, so, of course, I don't know what the users of other drinks call their particular drink. [486]

Redirect Examination by Mr. ROGERS.

"RDQ. 1. Mr. Albright, you stated a few moments ago, in answer to a cross-question, that you didn't serve this product of the Koke Company of America for "Coca-Cola"; the fact is, isn't it, that you didn't serve it to people who used the word "Coca-Cola" in making their request?" "A. Exactly, yes, sir." "RDQ. 2. You did, however, serve it to people who used the words 'koke' and 'dope.'" "A. Yes, sir."

(Deposition of Edwin Roy Albright.)

Recross Examination by Mr. LITTLETON.

The way I know that "Coca-Cola" is manufactured by the Coca-Cola Company of Atlanta is because it has always got labels on it to that effect.

Deposition of George L. Seibert, for Plaintiff.

GEORGE L. SEIBERT.

Direct Examination by Mr. ROGERS.

I am 21 years old, live in Mobile, and am soda dispenser for Dave F. Bauer, the druggist here in Mobile. His place of business is located at Dalton and Constitution Sts. Yes, sir; I was working for Mr. Bauer the latter part of 1913 and continuously in 1914, as a soda dispenser. Yes, sir; I recognize the card presented to me marked Plaintiff's Exhibit #100. It's a card ordering us to sell them what they want when they come in and ask for it. Yes, sir; we dispense "Coca-Cola" at our fountain. Yes, sir; we hear the word "koke" used at the fountain. I understand that a man wants "Coca-Cola" when he comes in and asks for "koke," or "dope" and I supply "Coca-Cola." The occasion of this card was to try to get the people to call for "Coca-Cola" when they wanted it—that they didn't have "Koke" or "Dope." By "Dope" and "Koke" in this connection, I mean the product of the Southern Koke Company. When people come in and asked for "dope" before I got this card, I would give them "Coca-Cola" and when we got the card down there Mr. Bauer told us what to do and say—we handed it out to them and they would say, "you know what I want—'Coca-Cola'"—

(Deposition of George L. Seibert.)

and it made a few of them mad, you know,—I mean by that, by giving them the card and telling them that we didn't have "Dope" and "Koke,"—they said "I want 'Coca-Cola,' " that's what they would say, it would be nine out of ten that would tell you that. Well, no, sir; they did [487] not express any surprise or say anything, on being informed that there was a product on the market sold under the name of "Dope" and "Koke," but the card, why, it helped us out and they say "give me a 'Coca-Cola'." Our purpose in showing this card to the people was to let them know we didn't handle "Koke" or "Dope." You ask if, from my experience as a soda dispenser, I have formed any opinion as to the meaning of the words "koke" and "dope"; well, the only way I can say, it would be more of a nickname for "Coca-Cola." When people want that, they think of it quicker and it's more of a nickname for it, too, because anybody coming in there—I have seen it quite often happen—and asking for "koke" or "dope," they go to ask you about Candler in Atlanta, telling you how he got rich off of it, and they call for a "koke" at the same time and then they will tell you about it; therefore, they mean "Coca-Cola" when they come in and ask for it.

Cross-examination by Mr. DART.

I have been here with Mr. Bauer about fifteen months, I suppose. The word "dope" has no meaning to me except "Coca-Cola," that's all. I have never heard it used in any other way at a soda-fountain. Yes, sir; it has a meaning. I understand it to mean generally "Coca-Cola." When you ask me or

(Deposition of George L. Seibert.)

anybody else for "dope" you get "Coca-Cola" down at Bauer's Drug Store. Well, I have heard of "dope" as something else besides "Coca-Cola," but I have never seen any of it. "XQ. 8. I ask you again, you have never heard of 'dope' as anything else but 'Coca-Cola?' " "A. Well, it might have been something on the order of 'Coca-Cola.' " I understand "dope" is "Coca-Cola." "XQ. 10. You have lived in this world so long or so short a time you don't know whether 'dope' "—"A. Yes, sir; a fiend, or a dope fiend—the stuff that they take, something on that order." Yes, sir; I know that the word "dope" as a general thing is a word signifying the use of a drug or something like a drug, something that stimulates you—it can be used in that way. By dope fiend I mean that different people take coke, for instance, things like that—cocaine or morphine. No, sir; as a rule when I speak of "dope" I do not mean cocaine or morphine, but I do not still insist that the word "dope" has no other meaning [488] than "Coca-Cola," because it has other meanings like I told you—a field—anyone taking cocaine, you call that "dope," and it means a drug on the order of cocaine, that's the only way I have heard of it, and a drink something on the order of "Coca-Cola." No, I have no idea why they call "Coca-Cola." "dope." You ask if there is any other drink I know of called "dope"; well, only on the order of "Coca-Cola." Yes, sir, any drink on the order of "Coca-Cola" is called "koke" and "dope." Outside of the drinks "Koke" and "Dope," in this law-suit, I don't know

(Deposition of George L. Seibert.)

of any other soft drinks that are called "dope." No man has ever used the word "dope" in my hearing, except he meant "Coca-Cola," and it is my belief, except he is addicted to cocaine or morphine, and is, therefore, called a "dope fiend," the word "dope" has no other meaning. Well, no, sir, I don't think that "dope" as applied to "Coca-Cola" signifies that it has cocaine in it. Yes, sir; I had thought of that before you asked me the question. Some of the rank and file of people generally believe there is cocaine in "Coca-Cola" and some of them believe other things. You ask if it isn't the general impression that it has cocaine in it; well, I have heard them say it has caffeine in it, but I have never heard them say it has cocaine in it. I say some of them say it has caffeine in it, because I have heard them say so. If I said awhile ago that some of them say it has cocaine in it, I didn't mean it, I meant caffeine. No, sir, we do not handle any other cola drinks at our fountain except "Coca-Cola." I have never heard anybody ask for any other cola drinks than "Coca-Cola." I have never heard them call for "dope" in bottles, but I have heard them call for "Coca-Cola" in bottles. Yes, sir, the words "koke" and "dope" are used interchangeably, one as much as the other—both used as a nickname for "Coca-Cola." You hear it called all three of those names; "koke," "dope," and "Coca-Cola" pretty regularly down here. Yes, sir, they call for "Coca-Cola" more often than they do for "koke." Yes, sir, the proportion of ninety-nine

(Deposition of George L. Seibert.)

out of a hundred will call for "Coca-Cola" by that name.

Redirect Examination by Mr. ROGERS.

You ask if I intended to say that ninety-nine people out of [489] every hundred called for this product by the name "Coca-Cola"; I said it, but they don't do it. When they call for "Coca-Cola" they call for "Coca-Cola" most—Yes, sir; that is, at our place. I don't know how long that has been true, a good while. There would be one-third of the people ask for "Coca-Cola" under the name of "dope." Yes, sir; I have seen "Coca-Cola" advertised and have also seen advertising of other cola drinks. No, sir; the advertising of these other cola drinks has not been as extensive as the advertising of "Coca-Cola."

Deposition of John W. Graham, for Plaintiff.

JOHN W. GRAHAM.

Direct Examination by Mr. ROGERS.

I live in Mobile, Ala., and am working at Bienville Pharmacy. That is the institution of which Mr. Upchurch is the President. I have been employed there several months this last time. I came the last time on the 15th day of February, 1914, but I worked there before. I had a few words with the representative of the Southern Koke Company about the last of February. Some one came in and asked for "koke" and I served him with "Coca-Cola" and this gentleman walked up—he asked to see the boss—the boss was busy right then, but I told him he could see him in a few minutes. He asked me if I had many

(Deposition of John W. Graham.)

calls for "koke" or "dope," and I told him, yes. He asked me did I serve "Coca-Cola," I told him yes. He asked me again did I think that they meant "Coca-Cola" when they asked for "koke." I told him, yes, because I asked them what they meant and they told me what they meant, therefore I served them "Coca-Cola." He said, "Why not have a 'koke'? You can get it a whole lot cheaper than you can 'Coca-Cola'." I told him I didn't know anything about that, I didn't know the price of "Koke." He said he was selling it and wanted to see the boss. I don't know whether he ever saw him or not, I went to dinner. Anyway, we talked quite a little bit on it and I said that a man who asked for "koke" and "dope" or "shot," meant "Coca-Cola," simply because when I first went behind the fountain I was an inexperienced man and didn't know what they meant and [490] they said "Coca-Cola," of course. When I got experience, a man came in, asked for "koke" nine out of ten he wants "Coca-Cola"—you ask him and he tells you what he wants. I made this statement to this man, who said he was the representative of the Southern Koke Company. We got into an argument and he said that when a man came in and asked for "koke" that I could serve him "Koke" and he would be getting what he asked for; that is I could sell him the product of the Southern Koke Company, Ltd. I said "No, he means 'Coca-Cola'." To the best of my knowledge thats the last time I saw this man, I didn't pay much attention, we talked about it, that's about all.

(Deposition of John W. Graham.)

Cross-examination by Mr. DART.

In my experience the average man does not call for "Coca-Cola"; he calls for "koke" and "dope" and "shot,"—those three words. I am twenty years old. You ask if I ever heard what "a shot" meant. What I think "shot" means, is when a doctor shoots some morphine or cocaine or something in your arm, that's what I always thought a "shot" was. "Shot" and "dope" mean what a man craves, what he wants—that's what I think. When a man asked for the first time for "a shot" I didn't know what he meant, I hadn't served "Coca-Cola" more than a half dozen times and I asked "a shot"?—what it meant, and he said, "Coca-Cola"—I didn't know what he meant. It was new to me, I thought I would find out about it, and I asked him what he meant. They ask for "dope" and "koke" I think about two-thirds, my experience has been. Yes, sir; they gave me the idea that they looked on "Coca-Cola" as a "shot." When they asked for "koke" I thought they meant "Coca-Cola." They gave me the impression when they asked for "dope" or "a shot" that they were asking for a drink that was the equivalent of a "dope" or a "shot," and to a certain extent it made me think of what I have often heard, that "Coca-Cola" has cocaine in it. I can't say that that is the impression of most of those who drink "Coca-Cola"; some think it, some not. I have talked to some and they believe they are getting a little cocaine in their drink when they get it. [491]

(Deposition of John W. Graham.)

Redirect Examination by Mr. ROGERS.

No, sir; I do not know whether or not there is any cocaine in "Coca-Cola." I don't know nothing about the process of what it possesses, no more than the man in the moon. I serve it but still I haven't the least idea of what's in it. That is the product that is bound to be meant when our customers come in and ask for "dope" and "koke." Whenever I ask one he says "I mean 'Coca-Cola,'"—he wants "Coca-Cola,"—I say, "How about if I give you a 'Koke ?'" "Well," he says, "I won't drink it." I have been there about two years and that's the question I ask them because I was instructed to do so.

Recross-examination by Mr. DART.

Of course, I was not acquainted with these nicknames until I hit these fellows explaining and teaching it to me. I never had heard these words before in connection with this drink.

Deposition of Robert Chidsey, for Plaintiff.

ROBERT CHIDSEY.

Direct Examination by Mr. ROGERS.

I am manager of the Etawah Company—soda water and ice-cream parlor—250 Dauphin St., Mobile, which concern operates a soda-fountain. Yes, sir; we dispense "Coca-Cola." The Coca-Cola Company, Atlanta, Ga., is the maker of "Coca-Cola." Yes, sir; that is the product that is extensively advertised under the name of "Coca-Cola." Yes, sir, I recollect having a call from a representative of the Southern Koke Company, Ltd., about three or four

(Deposition of Robert Chidsey.)

months ago. He proposed to sell me his syrup called "Koke," which he claimed was a good substitute for "Coca-Cola" and that it could be sold for "Coca-Cola" and I stated to him that I didn't care to purchase this syrup to sell in place of "Coca-Cola" and he thereupon figured up the difference in profit between "Coca-Cola" and his stuff. Under his way of figuring it, his syrup cost me about fifty cents a gallon less than "Coca-Cola." He told me that if I bought a certain number of gallons within a year's time that I would get a rebate. I don't know exactly how much it was now, but it must have been something like twenty-five cents a gallon if I bought as many as two thousand gallons. This representative had [492] a card, but I have misplaced it, and, also, the letter which he sent me, after he left here. Yes, sir; he sent me a gallon of this "Koke" syrup." It was put up in a jug, the same kind of a jug, I believe, that the Coca-Cola Company puts it up in when they send it out in gallons, and had a label on it marked "Koke" and the name of the concern, Koke Company of New Orleans, on the label. This was shipped by express. The name on the letter-head of the letter that I received was "The Koke Company, New Orleans, La." The card was similar to the letter-head. I expect I sold the jug for I had a number of other jugs from the Hungerford-Smith Co. I haven't got it.

Cross-examination by Mr. DART.

No, sir; I couldn't recollect the name of the man that called on me, because I misplaced the card. As

(Deposition of Robert Chidsey.)

near as I can remember, he was a rather stout man like Mr. Rogers, here, and had dark hair, I believe, that's as good a description as I can give because I only talked to him a few minutes. I didn't know him before he called on me, and, without any preliminary knowledge of me or I of him, he opened the proposition for me to commit a fraud on the public by substituting his goods for "Coca-Cola"—that's my testimony. You ask if that wouldn't have been an arrant fraud; well, he told me I was a little too conscientious about the matter. I don't know whether or not he thought I was that kind of a man when he approached me. Yes, sir; I am quite sure that this man, an utter stranger to me, walked in my store and made that proposition to sell me some stuff and told me I could serve it in the place of "Coca-Cola." Yes, sir; he did tell me that he had a syrup called "Koke" that had been on the market for years, and that he had that name copyrighted. He didn't however, tell me that the name was well known to the trade. He claimed that I could make more money out of this stuff as it would cost me less money than "Coca-Cola." Yes, sir; that is all he said to me. He said I could sell "Koke" in the place of "Coca-Cola" and make more money out of it. He said I would get the same price for it as I did for "Coca-Cola" but argued that if a man came along and called [493] for "Coca-Cola" I could serve him that, which would net me a greater profit than if I gave him genuine "Coca-Cola." Yes, sir; I still insist that his only object in

(Deposition of Robert Chidsey.)

seeing me was to induce me to buy his syrup and sell to my customers instead of "Coca-Cola." He thought if I handled his goods it would be a benefit to him, as well as myself. I don't know whether you would call it a fraud or not, but he put the proposition up to me that if I served the syrup he had in place of "Coca-Cola" I could make a greater profit out of the business than I could by serving the real "Coca-Cola." Yes, sir; I am sure that he used the words "in place of 'Coca-Cola'," and not "as a substitute for 'Coca-Cola'." Well, he said a great many things, I suppose, that he considered in his favor and mine, but that's what it really amounted to, and I rejected his proposition. The reason why he sent me a gallon afterwards was because he told me I could try it and taste it and if I didn't think it was as good as "Coca-Cola," and it couldn't be served as "Coca-Cola," that I needn't bother about it any further. I did try it and served it to my customers and tried it myself. I didn't think it was as good as the "Coca-Cola" product. No, sir; I didn't sell it, I threw it away. No, sir, I didn't keep the jug, I sold it among a lot of others, probably 50 or 75 jugs, I had. I acknowledged receipt of this jug only by signing the slip of the express company, the receipt. I said he wrote me a letter, but I can't find it right now. No, sir; I did not answer it. Yes, sir; the letter came probably a day before the jug did, advising that he was sending the jug and I could try it. I haven't talked to anybody, especially, about this matter of my testimony. Mr. Pierce asked me about

(Deposition of Robert Chidsey.)

it, if I had been solicited on the subject. I don't know how he knew I had been approached in this matter. He asked me if I had been solicited, and I told him, yes, which I had. I told him what I told you; he knew nothing of it until he called on me, that I know of. It is not for me to say why he called on me. Yes, sir; I came up here without a subpoena at the request of Mr. Pierce. No, sir; I did not come in his company. It was yesterday that I first talked to Mr. Pierce about this matter. [494] I am secretary, treasurer, and general manager of this establishment I am talking about. I couldn't fix definitely the time when this stranger called on me with this proposition, because it is just like drummers passing in and out, like that, and I don't recollect the date. Oh, it has not been longer than four months ago.

Deposition of Robert W. Elliott, for Plaintiff.

ROBERT W. ELLIOTT.

Direct Examination by Mr. ROGERS.

I am 32 years old, am a soda dispenser, and have charge of the Van Antworth soda-fountain department in Mobile, Ala. This concern is, I suppose, about as large as any in the South. The Van Antworth is a large drug-store here in Mobile. Yes, sir; I am familiar with the product that is advertised under the name of "Coca-Cola." The maker of that is the Coca-Cola Company, Atlanta, I believe. I have known of "Coca-Cola" ever since I have been in the soda water business, say fourteen years, I guess. Yes, sir; I am about this fountain at our

(Deposition of Robert W. Elliott.)

store, and have been in other stores where I have been employed, and have heard the names people use when they order drinks. Yes, sir; people come into the soda-fountain and say "give me a 'dope'" and "give me a 'koke'" and, when they do so, I understand that they mean "Coca-Cola" and I supply "Coca-Cola" in response to such demand. No, sir, I have never had it rejected on the ground that it was not what was wanted. "Q. 18. State what the facts may be in respect to the words 'koke' and 'dope' being commonly used as nicknames for 'Coca-Cola.'" "A. Well, they are commonly used as nicknames for 'Coca-Cola.'" I have known these words "koke" and "dope" being used as nicknames for "Coca-Cola" ever since I have been working around soda-fountains, about 12 or 13 years.

Cross-examination by Mr. DART.

No, sir; I don't personally know that "Coca-Cola" is manufactured by the Coca-Cola Company in Atlanta, Ga., but I know when I order our "Coca-Cola" supply we order it from that concern direct. These people who came in to drink "Coca-Cola" in our place ask for it under different names; they ask for it under "Coca-Cola"—I have heard them ask for it under "dope"—I have heard them ask for a "koke"— [495] I have heard them call for a "shot in the arm," meaning "Coca-Cola," and I have also heard them call for "morphine cocktails,"—a good many nicknames, all meaning "Coca-Cola," they are all satisfied when we give them "Coca-Cola," we never hear any complaint. There is no

(Deposition of Robert W. Elliott.)

way of getting at the proportion of people who ask for "Coca-Cola," using the name "Coca-Cola," I don't think. A customer will come in to-day and call for "Coca-Cola" and to-morrow he will nickname it. You ask if the word "Coca-Cola" is not liable to fall into disuse and be substituted by these other names; well, when they call for "dope," anything of that kind, we serve them "Coca-Cola." I couldn't tell you exactly what percentage of our customers who call for "Coca-Cola" use the proper name. I don't know, sir, why they should call it "morphine cocktail," it is just a nickname some people have given it. You ask why should they call it "shot in the arm"; that is just another,—"dope," you know, is a "shot in the arm." When a person gets "dope" they get a "shot in the arm." "Dope," in that sense, I suppose, would be cocaine, something of that kind, or morphine, but that is just a nickname that the customers have given it. Yes, sir, these customers of ours call for this drink in the language of a dope fiend. Oh, no, sir, they are not dope fiends, all of them, not that I know of. "XQ. 17. And you know this language is of a dope fiend and consequently supply 'Coca-Cola' when they call for 'dope'." "A. Well, working around a place that way we are supposed to know what he wants, if he nicknames it, calls it anything else, we are supposed to know he wants 'Coca-Cola'." Ever since I have known anything about it, I have known it to be called that way. I couldn't say whether this is based upon the theory that there is "dope" in it or not, nor

(Deposition of Robert W. Elliott.)

could I say whether or not it is the general impression that there is "dope" in it. Oh, I don't know, sir, whether a man would call for "morphine cocktail" unless he thought the drink he was going to get would set him up; I have heard people call for lots of other things by nicknames when there wasn't any "dope" or anything else in it. No, sir; I don't believe I do know anything about the other things I speak of so universally referred to in this slang language. [496] No, sir, our lady customers do not call for "shot in the arm," I have heard lots of them call for "dope," though. No, sir, it left no impression on my mind as to why this drink should have gotten that name. No, sir, I have not heard our people discuss the fact that it had cocaine in it or morphine. I haven't talked to them about it. My duty is simply to gather in the various ways in which they speak of this drink, and serve it to them. Yes, sir, I have got the vocabulary that can meet the demand. You ask if I am willing to say that ten per cent of my customers call it "Coca-Cola"; well, I will tell you I have never tried to keep track of how many really did call it by nickname. I have never paid any attention to how many call it "Coca-Cola" or how many call it "dope," or any other name, nor do I know how many people a day drink "Coca-Cola"; that is hard to say, but we use a great deal of it. Of course, we don't handle any other cola drinks. Yes, sir, I am entirely a "Coca-Cola" man,—and so is my establishment—that is, we sell nothing on that order except "Coca-Cola"—in fact, we sell no other patent drink except

(Deposition of Robert W. Elliott.)

“Coca-Cola”; besides one, we make all our own stuff. I don’t believe I ever did hear of a man ordering any other cola drinks. I have heard of other cola drinks, but I have never heard a man ask for another cola drink over the fountain. Of course, I don’t know what other people call their particular “dope,” or their particular drink, rather. I don’t know whether they call for their drinks as “dope” and “koke” or not, nor do I know whether or not “dope” and “koke” are common names for cola beverages as a class.

Deposition of I. V. Wood, for Plaintiff.

I. V. WOOD.

Direct Examination by Mr. ROGERS.

I am connected with the firm of Albright & Wood, druggists, Mobile, Ala. We have two stores, one at Dalton & Jackson Sts. and the other at Government Street, in each of which we have soda-fountains from which we dispense “Coca-Cola.” I have known “Coca-Cola” for about twenty some odd years, I guess—about twenty years, I think. You ask who makes it; well, the label on the barrel says it is made by the Coca-Cola Company of Atlanta. [497] Yes, sir, it has been extensively advertised. Yes, sir, I have been about the fountain enough to be able to testify that I know how people ask for the drinks they want. Yes, sir; I have heard the words “dope,” and “coke,” used as nicknames for “Coca-Cola.” I have known them to be used as nicknames for “Coca-Cola” practically as long as I can recollect the name “Coca-Cola.” When a person at my

(Deposition of I. V. Wood.)

fountain, say ten years ago, would come in and say "give me a 'dope,' " or "give me a 'coke,' " I would naturally know that he wanted "Coca-Cola," and, if he made that request at the soda-fountain, "Coca-Cola" is what I would furnish, and what we do furnish now, in response to such requests. I have never had it rejected on the ground that it was not what was wanted. Yes, sir; I have had a conversation with a representative of the Southern Koke Company. I can't recollect the date, exactly,—some time about twelve or fifteen months ago, I should think. I do not remember the man's name,—I only know one of the salesmen here, Mr. Mayfield, I believe, here,—and there has been one or two called one me, but I don't recollect the name. Yes, sir, he tried to get me to purchase some of the product of the Koke Company. He claimed that "Koke" and "Dope,"—that they had the copyright name for it, and that it was their product, and, if a man came in and asked for "Koke" or "Dopé," why we had a right to sell their product,—that they had a registered name for it, that was my impression, that they sold it under. Yes, sir; I bought one barrel of their product, I think, which was delivered. I think the barrel in which it came,—I don't know exactly, but I believe the barrel was kind of a dark red, or maroon color. It was very much like the "Coca-Cola" barrel in one respect,—across the heading of it was a little bit different, not exactly like "Coca-Cola." No, sir; it did not have a label on it. Yes, sir, I requested it to be shipped without the label.

(Deposition of I. V. Wood.)

It came from New Orleans, La., by freight, and was delivered to my store here in Mobile. The representative of the Koke Company didn't ask me to come out and substitute this product for "Coca-Cola," but he said in the conversation I had with him,—he said, "When they ask for 'Koke' or 'Dope,' [498] why it means that our product is to be sold because we have a registered name. We are sole owners of the name 'Koke' and 'Dope,' and you have a perfect right to serve them and serve our product; and when people ask for 'Coca-Cola' to give them 'Coca-Cola.' " They didn't insist on me serving "Coca-Cola" when they asked for "Dope" but they said for me to use two cans, one for "Koke" and one for "Coca-Cola" and I bought under these conditions—that I use one for "Coca-Cola" and one for "Dope" when they asked for it. No, sir, I don't believe I had ever heard of any product except "Coca-Cola" up to that time under the name of "Koke" or "Dope." "Q. 41. Then the fact that the Southern Koke Company was making a product which they were designating as 'Dope' and 'Koke,' was a surprise to you, wasn't it?" "A. Yes, sir." I can't say whether I bought any more of this product designated as "Koke" and "Dope" by the Southern Koke Company except the one barrel testified about, I can't recollect right now, I wouldn't know it unless I looked up my records. Yes, sir, there was a stock proposition connected with the purchase; there was so many shares of stock with each barrel of the "Koke" or "Dope." Yes, sir, I said something to

(Deposition of I. V. Wood.)

this agent at the time to the effect that I recognized “koke” and “dope” as nicknames for “Coca-Cola.” Well, he told me to serve it under the name “Koke” and if people asked for “Koke” serve it—serve “Koke.” He said I had a right to serve their product because they had a registered name which was a registration of “Koke.” “Q. 47. Anything said about ‘Dope’ in that connection?” “A. ‘Dope,’ too, ‘Koke’ and ‘Dope.’ ” You ask if anything was said about the product being like “Coca-Cola,” by the agent; well, I think so, I believe it was supposed to be the same thing. I couldn’t say right now whether he said it was the same thing or not.

Cross-examination by Mr. DART.

As near as my recollection served, the “Coca-Cola” barrel was of the same color as the “Koke” and “Dope” barrel; it was similar, dark or maroon color, reddish color, rather maroon color, something mighty close—mighty close to the same color, my best recollection is it was. [499] Yes, sir; I have handled a good many “Coca-Cola” barrels. I don’t know whether they are exactly the same color or not, as those I am speaking of, because I never paid very much attention to these barrels, only I know it was a dark-colored barrel, either maroon or a dark red. You ask if the “Coca-Cola” barrel comes in the maroon or dark red; well, yes, sir; that’s what I would call it; I am not very good on colors, but the nearest my recollection is, it is—I know a “Coca-Cola” barrel when I see it. No, sir; I couldn’t mistake pink for dark red or maroon. Yes, sir; my

(Deposition of I. V. Wood.)

testimony is that the "Coca-Cola" barrel and these other barrels were both dark red or maroon. No, sir; I don't serve any drinks at the fountain myself and haven't done so for years. I only occasionally go back there. I go back there some mornings if I happen to open up before the soda clerk gets down. I don't know that it would be an accident when that happens because it is a very common occurrence. No, I have not handled any other cola drinks in my place—nothing but the "Coca-Cola" and the stuff called "Dope" or "Koke." No, sir; I don't know what people call their particular drinks; I had a number offered me but I never did buy them. No, sir, I don't know what the people would say when they called for them. You ask what is the meaning of the word "dope"; I claim "dope" has two meanings: It is a slang—"the dope on horse-races," "the dope on the baseball game" and different things; but when a man comes to the prescription department, I would think that he wanted a narcotic if he called for a "dope." If he went to a soda-fountain I would naturally think he wanted "Coca-Cola." Yes, sir; I have got the "natural thinking" idea from having it once explained to me that they want "Coca-Cola" when they call for "dope." I can't exactly recollect that I was shocked that he wanted "dope" the first time I heard a man call for "dope," because it has been a common expression of the word, used for a substitute for the word "Coca-Cola"—as a nickname—I don't know which you might call it—since I have been big enough to know

(Deposition of I. V. Wood.)

anything—I have been working in drug-stores since I was ten years old. The idea originated, I suppose, from the conception that he wanted a dope of some sort,—that is, that it had something in it that stimulated or attracted a man [500] and made him come again. No, sir; I don't know how many drinks of "Coca-Cola" per day I served from my fountain, I haven't kept any record of it. You ask if you are to assume that the customers who come in never use the word "Coca-Cola" but always call for either "dope" or "koke"; well, you can watch a customer, sometimes he will come in and ask for "Coca-Cola" and possibly the next day he will call for "dope" and the next day he will call for "koke." I find the average "Coca-Cola" drinkers are liable to call for it under either one of these three names. I will say that there isn't twenty-five per cent of our customers that uses the correct name for "Coca-Cola." Possibly twenty-five per cent of my trade use the correct name and about seventy-five per cent of my trade will call it "dope" or "koke." Well, yes, sir; I think the word "koke" is as prevalent to-day as it was some years ago. Yes, sir; I am the partner of Mr. Albright, who testified a while ago. Yes, sir; I have talked the matter over with him. No, sir; I did not know pretty much what his testimony would be. I knew what he knew, yes, sir; we were both together once or twice when the transaction of this business came up. Yes, sir; we were together when a man named Pierce had been talking to us. Yes, sir; we thought it was serious enough to have a con-

(Deposition of I. V. Wood.)

sultation. Yes, sir; we were anxious not to get involved in this lawsuit. We know the power of the Coca-Cola people and I am making a living out of "Coca-Cola" and my business, together. You ask if it is not a fact that the "Coca-Cola" people look with disfavor on any man in my business who handles the product of a rival concern; well, I don't know, I couldn't say exactly, I have never had any trouble with them. Yes, sir; I would think it a serious blow if the Coca-Cola people deprived me of the right to sell "Coca-Cola." They advertised the product and, of course, to-day, it is, in our business, the man who seeks the advertised product who makes the success. I would want to sell "Coca-Cola," of course, and would rather get along well than be opposed to the "Coca-Cola" people. No, sir; I don't know that there is a great rivalry between these cola drinks. Well, no; I don't know that the "Coca-Cola" people are exhausting the legal machinery of [501] the land to crush out rival drinks,—only, of course, the substitutes. Any man that has got a product that he owns and creates a demand for naturally wants to protect its preparation. No, I do not believe that the "Coca-Cola" people think their drink is the only one that ought to be on the market, and want a monopoly of it. I do know, however, that they are litigating all over the country, but whether this litigation is to crush out rival cola drinks or not, I couldn't say—this case here and one or two others,—I can't recollect them right now,—but I couldn't say. Yes, sir; men like me are very

(Deposition of I. V. Wood.)

susceptible to a lawsuit. No, sir; I couldn't deliberately go into anything that looked like a lawsuit. No, sir; I have never heard of any cola drinks on the market but the "Dope" and "Koke" product. I don't know what names the trade calls for in the other retail drug-stores. I don't know whether or not they call for these other cola drinks under the names "dope" or "koke." "XQ. 60. You don't know whether the names "koke" and "dope" are common nicknames of the trade, do you?" "A. Well, from the training each man in my line has been brought up to he naturally feels when a man comes in and asks for 'dope' or 'koke' they want 'Coca-Cola.' " Yes, sir; I have been in the "Coca-Cola" business all my life and have handled nothing but "Coca-Cola" except this product previously mentioned—and only a barrel of that. Of course, I don't pretend to know what names the trade uses in calling for the other drinks of a similar character. No, sir; I haven't talked it over with my partner at all since he testified here, two or three hours ago. I phoned from the store and asked if he was up here and he said yes. No, he didn't tell me what you had been asking him, only he said he came and made up his testimony about the transaction we had about Mr. Mayfield. You ask if he didn't tell me what he had been asked about "dope" and "koke"; well, he said he had been asked the difference between "dope" and "koke." No, sir; he did not also tell me that you asked the origin of the expression "dope" and "koke." He didn't say anything which

(Deposition of I. V. Wood.)

would communicate to my mind that he had been examined along those lines or along the same lines I have been examined on, but I knew he had, because I knew what it was— [502] knew what he was here for.

Redirect Examination by Mr. ROGERS.

One of the representatives, I don't know which one, told me a man serving "Coca-Cola" under the name of "Dope" or "Koke" would violate the law because they owned the copyright name for "Dope" and "Koke" and a man really ought to serve it when they call for that, because they own it and nobody else. He said something about substitution, but I can't recollect what the conversation was. No, sir; no representative of the Coca-Cola Company ever threatened me with a lawsuit or mentioned lawsuit to me and I don't recollect right now that any such representative ever intimated that I might get into one. No, sir; I don't remember that any representative of the Coca-Cola Company has made any threat. When we were handling this product of the Koke Company of America and had it in a separate container in the fountain and a man came and asked for "Dope" or "Koke" I gave him the product "Koke" or "Dope"—the product of the Southern Koke Company, Ltd., yes, sir. Well, we had that barrel because I was under the impression that they were the sole owners of the copyright name "Koke" and "Dope." "RDQ. 10. You thought you were compelled to do that?" "A. Yes, sir." You ask if I felt that I might be sued if I didn't handle it; well,

(Deposition of I. V. Wood.)

I will tell you, I didn't like to be a substituter and I thought I was doing my duty to do it. Yes, sir; I got that idea from the statement made to me by this representative of the Southern Koke Co. Yes, sir; that I would be a substituter if I didn't sell the product of the Southern Koke Company when people asked for "Koke" or "Dope." You ask what I understood the purchaser meant when he asked for "koke" or "dope"; naturally, as I stated before, if a man asked for "koke" or "dope" I was under the impression all the time that he wanted "Coca-Cola."

Recross-examination by Mr. LITTLETON.

I knew that he wanted "Coca-Cola" because "dope" and "koke" had been common names since I had been knowing it—nicknames for "Coca-Cola" before I ever heard of any substitute or any other preparation with a similar name; ever since "Coca-Cola" was put on the [503] market, and I took it for granted that was what they wanted. You ask if I have ever heard of any other cola beverages on the market to-day; well, I can't recollect the names, but I have heard in a way that there was a lot of other preparations under different names, the same stuff practically that the Koke Company made. No, certainly I don't know what they are, and I don't know what names they are called for by. You ask how do I know when a man asks for "dope" that he don't want "Gay-Ola" or "Rye-Ola," for instance; the only thing I can say—I am not any soda expert, but being connected with the fount the number of years that I have, the word "dope" and "koke" has been,

(Deposition of I. V. Wood.)

I think, used and sold over the counter for "Coca-Cola." Yes, sir; our customers know we are handling just "Coca-Cola," and naturally when they go there they expect to get "Coca-Cola"—that is some of them do, but they ask for "dope" and they expect to get "Coca-Cola," lots of them think it's "Coca-Cola," ninety-nine per cent of them, because they know we are handling "Coca-Cola." You ask me to fix, if I can, the date of the interview with the "Koke" salesman about whom I have spoken; well, now, I can't recollect the date; it was either January—last December, I believe, or some time last year. I can't recollect, it has been several months ago. I couldn't say if it was about the time I got the stuff, I have never looked at the files.

Re-redirect Examination by Mr. ROGERS.

The slip marked Plaintiff's exhibit #100 is an order for a barrel of "Koke" which we purchased from the Southern Koke Company, Ltd. Plaintiff's Exhibit #102 is a carbon copy of a genuine letter that was written. I didn't write it, but my partner did; I seen it on the file. Yes, sir; I remember the letter marked Exhibit #103 and it is genuine.

Re-recross-examination by Mr. LITTLETON.

I said I didn't think there was any label on the end of the "Koke" barrel I got. No, I did not say nothing was marked on it, only I said there was no label on it at all. The only thing I know stencilled on it was the firm of Albright & Wood. I didn't

(Deposition of I. V. Wood.)

notice the stencil on there, where it came from.

(The following depositions were taken in New Orleans, La., on August 4th and 5th, 1914:)

Deposition of M. D. Palmer, for Plaintiff.

M. D. PALMER. [504]

Direct Examination by Mr. HIRSCH.

I live at 717 Howard Ave., New Orleans, La. I have lived in New Orleans about three years. I am a representative of the Sherwin Williams Company, which concern sells paints and varnishes. As such representative, I have had business dealings with Southern Koke Company. I don't remember the exact date, but it was sometime in March of last year, I think, something like that. Yes, sir; I had some business with them about February 13, 1913. The nature of this business was that I was to try to sell them some paint for the barrels there. I went to the Southern Koke Company's place of business on Howard Street near Carondelet and I saw Mr. Scott, who was manager then of the Southern Koke Company. I spoke to him in regard to buying paint and he referred me to the gentleman in the back, who had charge of the painting of the barrels. I went back to see if I could secure some business from him and sold him five gallons of paint. Plaintiff's Exhibit #104 is a paper which shows that he bought five gallons of red paint. My company shipped this paint to the Southern Koke Company, which concern used one gallon of it and shipped the other four gallons back. I went around to see what the trouble was

(Deposition of M. D. Palmer.)

and it seems that the paint was not the exact shade he wanted. He thought after it went on barrels it would come out a better shade than it did. He just wanted to know if he could get a red as near the "Coca-Cola Red" as possible. About that time I went to see Mr. Freeman of the Louisiana Coca-Cola people and asked him in regard to the paint they were using and he advised me not to have any dealings with them whatsoever in regard to getting paint as near that shade as possible, that they had a patent on it and their paint was known as the "Coca-Cola Red." After that I had no further dealings with the Southern Koke Company.

Cross-examination by Mr. DART.

Yes, sir; I have a memorandum of the paint that was returned to us, but I couldn't tell you the exact date, I would have to look that up—we keep all such memoranda as those, though. Yes, sir; I will look it up and let somebody here know it. No, sir; I did not receive the paint myself when it was returned, I am not the receiving clerk. [505] Yes, sir; I suppose in order to demonstrate who got the paint when it was returned you will have to get the man who received it at our office. I was telephoned to come to get it and I sent for it. I was at the Southern Koke Company when I telephoned to our wagon to come and get it. I believe at that time the paint was something like 70¢ or 80¢ a gallon, so that the five gallons amounted to something like \$3.50. The man I first spoke to was Mr. Scott, whom I knew. Yes, sir, I now know that he is dead, but I didn't until just a

(Deposition of M. D. Palmer.)

few days ago. Yes, sir; I claim that I passed back from Mr. Scott to somebody I don't know, in the back. I don't remember his name, no, sir. It seems to me from what he told me he came over here from Dallas to kind of look out for that end and help Mr. Scott out as shipping-clerk—he was painting barrels back there himself, that was the position he was holding, and it was that fellow who told me afterwards that the color didn't suit him. No, sir; I can't recollect his name. No, sir; I did not go to Mr. Scott with the matter after he had returned the paint because Mr. Scott had given him authority about the paint back there. Mr. Scott did that in my presence,—that is, he gave him authority to buy the paint and any materials he would like. Of course, that's just my presumption; I have nothing on which to base it. I didn't feel it necessary to go and see Mr. Scott because he had given this man all the authority to buy the materials and I concluded the authority to buy them included the authority to also return them, and also authority to make the extraordinary statement that I just made, that he wanted a paint that resembled a paint of some other people. No, sir; he didn't tell me to go to the Coca-Cola Company to find out the color of their paint. That was a voluntary act on my part. You ask if it is usual for me to do that sort of thing when customers talk to me about the color of a paint; we try to match some colors when they are not known as patent colors. No, this man didn't ask me to go to the Coca-Cola people. I went of my own volition

(Deposition of M. D. Palmer.)

because Mr. Freeman is a personal friend of mine. No, sir; it doesn't strike me as curious when we arrange the order of sequence of events here—first that I had never sold any paint to the Koke Company, second that I went in there and sold them a five-gallon [506] order amounting to about \$3.00 or \$4.00; third, that I delivered the stuff; and, fourth, very shortly afterwards I was 'phoned to come and get it; fifth, that there was no condition in our trade that he was to return the goods; sixth, that I went back and got the goods; seventh, that he told me the paint didn't suit. I didn't say that he said the paint didn't suit because it didn't resemble the paint that the "Coca-Cola" people use on their barrels; I said that he said the color was off shade and didn't show up on the color card like it did when it was put on the barrel, and he asked could I get a shade as near the "Coca-Cola" people as possible, and I volunteered to take back this red paint and told him that I would try to go out and match the shade suggested. He told me that it was all right, that it was satisfactory to him, and then, in order to try it, I went at once to Mr. Freeman, who was my personal friend, and told him of this employment of the Koke Company,—putting me out to match colors, to get a color like theirs. Yes, sir; all that happened. You ask if, with all this combination of events, I didn't take the precaution to get the name of the man who had given me this extraordinary order or commission; I have his name in an old memorandum book, I can't call it off just now, that was

(Deposition of M. D. Palmer.)

sometime last year. You ask if I told Mr. Freeman the name of the customer when I told him I had a customer who wanted to match his paint; I told him nothing. I asked him where he got his paint. He said he thought they bought some of it from us in Atlanta, Ga. We have a man that makes that territory. I asked if he could find out about this shade he was using. He asked me why, and I told him I was having some business with the Southern Koke Company and they wanted a color as near his color as they could get. Then Mr. Freeman advised me not to have any business transactions with them whatever, because he stated that they were infringing on their rights, I believe, in using the name "Koke." No, sir; I am not from Atlanta. No, sir; we haven't a house in Atlanta, but we have a traveling representative who makes that territory. I think we have been selling the Coca-Cola Company, but I wouldn't say positively. However, Mr. Freeman told me that they bought some material from us there. No, sir; I was not sufficiently familiar with my business to know that we have [507] been furnishing the Coca-Cola Company with the exact shade that the Koke Company wanted. We have a pretty large concern that has something like 200 representatives and I don't know what everybody else does. No, sir; I am not the head of the concern; I am just their salesman here in the city. No, sir; I didn't look up to find whether we were dealing with the Coca-Cola Company or not. We haven't got records of that kind. From this office

(Deposition of M. D. Palmer.)

here we sell Mr. Freeman's office. Oh, yes; when I went to the Coca-Cola Company I knew the Coca-Cola Company was one of our customers; Mr. Freeman buys altogether different paint, though, from us. No one told me or suggested to me to go to the Southern Koke Company for this five-gallon order. No, sir; I didn't get any suggestions from the Coca-Cola Company that I might make a sale over there. No, sir; nobody in our office suggested that it might be a good thing to do; I went right from the Southern Koke Company up Canal Street, called on one or two other people and then to Mr. Freeman's office. "XQ. 74. You knew enough about the 'Coca-Cola' business, the minute you got this good piece of news, to go to Mr. Freeman?" "A. I went to match his color, if I could." No, sir; it doesn't strike me as extraordinary that, when I got this piece of information about matching the colors, I, who knew our concern had been selling to Freeman in New Orleans, should head right to the man to whom we had been selling all the time, to learn where he got his paint. It doesn't strike me as somewhat humorous, because there are a number of cooperage places here that all paint their barrels alike. No, you didn't understand me to say that the "Coca-Cola" people here are painting their barrels a different color than in other places. No, sir; I haven't been selling the Coca-Cola Company a red color here. I sell them a yellow to paint the cases with. Yes, sir; I knew the color of the "Coca-Cola" barrels, I knew they were red. Yes, sir; I had to

(Deposition of M. D. Palmer.)

go to Mr. Freeman in order to find out where he got that peculiar shade of red. I went to see if I could get some information from him. No, sir; it is not my custom when I get an order to match paint under similar circumstances to go at once to the concern that is using the paint desired to be matched. Sometimes I ask him offhand where he gets the [508] material—sometimes we get a sample from him to match the shade. I didn't discover that there was a controversy between the Coca-Cola Company and the Koke Company until I called on Mr. Freeman, up there. The time when I called on the shipping clerk for this order of paint is fixed on the bill as February 13, 1913. Then was my first transaction with the Koke Company and my last one. I knew absolutely not a soul in the place when I went to sell the stuff. Under some circumstances a five-gallon order is considered a medium order, but in the company it is considered a very small order. However, in the city we sell all kinds. It was an introductory order. Yes, sir; I suggested that we would like to do business with them. No, sir; I had never heard of these people before I went into their office. No, sir; I didn't just wander in there casually. I was across the street at the Jenkins-Evans Company—it was about the time the Southern Koke people were opening up—as I came from Mr. Jenkins' office I saw the sign. Yes, sir; I knew Mr. Freeman was the head of the "Coca-Cola" people in New Orleans. My relations with Mr. Freeman are not social or intimate, they are just business relations. I don't

(Deposition of M. D. Palmer.)

even go out with Mr. Freeman, nothing like that, we just have a friendly chat now and then, most of the time pertaining to business. You ask if he isn't outside the door now looking at me. He was a few minutes ago, but I don't see him now. Yes, sir; without introduction, without knowledge of the people I was going to see, I called at this establishment and placed this little order for five gallons of paint, and it was the next day, I believe, that we got it back. No, sir; I did not recognize at the time I called on Mr. Freeman, that I had given him a very important piece of information. In fact I never thought any more of it. No, sir; he didn't tell me I had; he never said a word to me. No, sir; when he told me that this red paint was an imitation of his paint, that fact didn't impress me at all, as a business man, that I had given him a very important piece of information. Sometimes, but not often, when I have an adventure of this kind in searching up a color to match where the cooperage companies are involved, as I have stated they are, here, I go to the cooperage companies to find where they get their [509] paint. No, sir; I don't believe I have ever had in my whole life before, that I recollect, an adventure of this particular kind. I have been in the paint business about two years. Yes, sir; I have been in it long enough to know that there is a color called "Coca-Cola Red" and also a "Coca-Cola Yellow," too. Yes, sir; I knew that when I was talking to Mr. Shipping Clerk. Yes, sir; these are two colors known to our trade. Yes, sir; the first 'phoned and

(Deposition of M. D. Palmer.)

left word for me to call up there and see them and I went back in the back and they told me the paint wouldn't do, it was off color, wasn't like the color he thought it was going to be. No, sir; he didn't say it was not like the color he had been getting, but that it was off color and didn't come up to the color card as I had exhibited it. When you put it on wood it doesn't show exactly the same as it does on the color card. The color of the card I exhibited to him was not a "Coca-Cola Red." I sold him a red paint. "XQ. 122. You wouldn't be guilty of selling the 'Coca-Cola Red' to a rival in the trade?" "A. The fact is, I don't know what it is myself." I know there is such a thing, but the orders are sent direct to Cleveland—it is a special piece of goods, I don't know what it is. They order it for the "Coca-Cola" people and call it "Coca-Cola Red." It is their color, and, so far as I know, there is no other color like it in the whole paint trade, but, of course, some other manufacturers might have a paint like it. No, sir; when this man gave me the order I didn't know that he was selling a drink like "Coca-Cola." I saw nothing in their office when I went in to indicate what they were handling, but I did when I went in the back. No, if you open an office, for instance, and I were walking up the street and saw the name "Dart, Lawyer," I wouldn't think of selling you red paint, but I went into this man's office because they had barrels, they shipped out material in them. I knew that because Mr. Scott told me that. Here was an establishment I had never seen before and I

(Deposition of M. D. Palmer.)

stepped in there at once, apropos of nothing, saw a sign up "Southern Koke Company," which conveyed no meaning to my mind, and stepped in there, introduced myself to Mr. Scott and tried to sell them paint. [510] I saw barrels in the back and asked him where he got his paint and that's how my nose lead me up to my trade. I stepped into a place I knew nothing about, with nothing to indicate that they wanted red paint particularly, introduced myself to Mr. Scott, and then my eye caught some barrels in the rear of the place, some of which were already painted red, but not the shade of red I sold them, and some were not painted at all. You ask if my professional eye did not recognize the paint on those barrels as "Coca-Cola Red"; I knew it wasn't "Coca-Cola Red" by looking at it. I knew that the barrels in the establishment were not the color of "Coca-Cola Red." When I told you just now that I didn't know what "Coca-Cola Red" was I didn't mean to tell you that, I know the shade. One is a darker red and a lighter red. No, sir; "Coca-Cola Red" is not darker, it has a high gloss to it and the paint he had on the barrel was more of a dead gloss. The paint I sold him was a little darker than the one he had. Yes, sir; I am positive that when he gave me the order he said nothing about "Coca-Cola Red" and nothing about "Coca-Cola." It was only when he tried on that order of mine that he 'phoned me to come and get my paint as it didn't come up to the order. He showed me two barrels where he tried it on and it was different from the colors that

(Deposition of M. D. Palmer.)

he already had. The situation the man was in was that after having put the paint that he had bought from me on the barrels, he found he was having two different colors and said he didn't want that shade—and, in fact, he didn't want the shade he was already using. Yes, sir; I just now thought of that last, it just now came to my mind. Yes, sir; he admitted he had made up his mind to change the shade, that is the reason he ordered from me; he was trying to get away from the people he was already buying from. When he saw me—an utter stranger to him—he said he wanted a red as near the “Coca-Cola Red” as he could get. The paint I saw on his barrels when I first went in there was nothing like the “Coca-Cola Red” at all. The sum and substance of it was that I sold an order of paint which was represented to be the same color as he already had on his barrels—that's what I understood when I sold him the order and he told me, when it developed that it was too light, then for the first time he told me he wanted to get rid of the color he was using [511] and wanted as near the “Coca-Cola” color as he could get. No, sir; I didn't tell him I knew the Coca-Cola people or that I was going to go down and report it to them. I couldn't tell you, sir, whether our concern is the only one that sells “Coca-Cola Red” in this city. No, sir; I don't know who it was the Koke Company was dealing with that they wanted to get away from. I don't, know, sir whether any other house could sell a red similar to the “Coca-Cola Red” or not. I don't know whether

(Deposition of W. J. Cheevers.)

any other concern carries "Coca-Cola Red" in stock. We don't carry it in stock. Yes, sir; if Mr. Freeman had given me the name of the people from whom he bought "Coca-Cola Red," I would have been very much surprised to find that it was my own concern. If he had done that or had given me the exact information I could have matched the color. When I went to Mr. Freeman, I wanted to get a sample of the material he was using. I couldn't tell you whether our house in Atlanta sells that red to the Coca-Cola people or not, or whether our house, through it's Atlanta people, sells the Coca-Cola Company that paint.

Deposition of W. J. Cheevers, for Plaintiff.

W. J. CHEEVERS.

Direct Examination by Mr. HIRSCH.

I am 42 years of age, and reside at 2023 St. Charles Ave., New Orleans, La. Yes, sir; I was connected with the Southern Koke Company of New Orleans, La. Yes, sir; I was connected with the Southern Koke Company of New Orleans practically from the rental of the building, sometime in October, 1912-1913, until the death of Mr. Scott—three weeks after the death of Mr. Scott, which was May 29, 1913. The Southern Koke Company was doing business in the city of New Orleans, at that time, and at the time I was connected with them. Mr. Scott, when I first became connected with them, was vice-president and general manager. Mr. Scott asked me if he could place a share of stock in my

(Deposition of W. J. Cheevers.)

name for the purpose of completing the board of directors, which share I obtained. I never took any part in the proceedings of their meetings, but I was a member of the Board. I got a postal card one day notifying me of a meeting. Mr. Scott lived with me from October until April of the following year, and in that time I was with him from morning until night, almost continuously. The capacity in which [512] I did work for the Southern Koke Company was that I was a salesman, supposed to take care of the saloon trade—get “Koke” introduced into the city of New Orleans. I was a free lance. You ask if I ever had any discussion with Mr. Scott in regard to “Coca-Cola” and “Koke”; well, we had innumerable discussions. I can’t say just right off, any particular one, but we had so many—for instance, there was one where I spoke to him about the unfairness of the business that he was going into and his wife tried to dissuade him from going into it. I asked him if he didn’t think it was unfair to be trading on the advertisements and money spent by another concern and he said he did, that he got into the thing over in Texas, wherever he had met those folks, the Koke Company of America—and they had taken him around, he had been at different soda fountains, and he found whenever a man wanted “Coca-Cola” he would invariably ask for “koke” and he saw the value of that as a chance to make money. When I first started out as a city salesman, Mr. Scott furnished me with an affidavit signed by Mrs. Pemberton—she was the widow, I believe, of

(Deposition of W. J. Cheevers.)

the original owner of "Coca-Cola"—in which she stated that Mr. Mayfield was familiar with and knew the original formula of "Coca-Cola" and was qualified, in her opinion, to manufacture it—something to that effect—if you have one here I will identify it. Mr. Scott told me the only difference between "Coca-Cola" and "Koke" is a slight percentage of celery, which was added to cover the patent or copyright laws. Yes, sir; I am familiar with the time that they first commenced bottling the product that they called "Koke." This bottle was not labeled. I told Mr. Scott that the bar-tenders generally,—the trade generally—they were complaining about the bottle not being labeled because there was not similarity between that and the Coca-Cola bottles; Mr. Scott said he would order labels and asked me if I would go with him to Houser's Printing Office—the legal printers. I went with him and we met Mr. Speyer there. Mr. Scott had the cuts, I suppose there were about a dozen, and he told him he wanted him to make him up 50,000 labels like that—said that he [513] wanted them about the color of the "Coca-Cola" label. A question arose about the color of the back-ground, whether it was purple or black. My idea was that the inset,—the "Coca-Cola" inset,—was red, always, for some reason or other. I said that to Mr. Scott. He said, "Well, you get a bottle from the corner, buy a bottle of 'Coca-Cola' and bring over here and we will see." So I brought it back and Mr. Speyer and Mr. Scott and all agreed that the color of the "Coca-Cola"

(Deposition of W. J. Cheevers.)

label was a dark purple or a dark blue—anyhow they agreed on the color, that was the color that he wanted, and he told him to make him up 50,000, I think, to simulate the “Coca-Cola” color. Yes, sir; those labels were delivered. Plaintiff’s Exhibit #105 is the label referred to. Yes, sir, these labels were used; a number of them were delivered to the American Bottling Company, who were then bottling “Koke.” Yes, sir; after I severed my connection with the Southern Koke Company I had a conversation with Mr. J. C. Mayfield, Sr., on, I think, three occasions. One time, I believe that—not after I severed it—once after I severed it—Mr. Mayfield telephoned me one day and told me he had a letter from Mr. Homer Scott and that Mr. Homer Scott would be in the city and why didn’t I come down to the office. I went down to the office and he asked me if I had ever sold “Koke” for “Coca-Cola”—if ever I had substituted. The question was unexpected; he brought me down on a false pretense, and I told him, “No,” and he wanted me to sign an affidavit to that effect. He had the jurat on the end of it, but I refused to sign it. The affidavit was testifying to the fact that I had never sold “Koke” for “Coca-Cola.” You ask if the affidavit was true; certainly it wasn’t true, I would have signed it if it had been true. I accompanied James Cain, S. Friend and B. J. Gillon, to the saloon of Thos. Rausch, corner of Clouet and Rampart Streets, in June, sometime, about fourteenth or fifteenth, but the exact date I won’t be sure of. Cain asked Rausch

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if he remembered his coming in there and selling "Koke." Rausch said he did. Cain then asked him if he remembered the representations that he had made at the time to effect a sale. He said,—I had nothing to do with it, Mr. Dart, I was simply a witness,—Cain asked Rausch if he told him he could sell "Koke" for "Coca-Cola." Rausch said "Yes. I remember the talk that he made at the time."

[514] (Defendants object to the alleged conversation between Cain and Rausch because mere bar-room gossip and hearsay. Overruled. Exception.) Yes, sir, about the same time I accompanied Jas. Cain, S. Friend, and B. J. Gillon to the saloon of Ed. Morero. I heard the conversation between them at this place, and it was along the same lines. Cain asked Morero the same questions and elicited the same answers. Yes, sir, I was in the place of business of the Southern Koke Company all the time, in and out all the time. You ask if I was ever in there when they had any "Coca-Cola"; when they made up the first batch of "Koke." Young Mayfield had a bottle of "Coca-Cola" syrup. The following day—I think it was the next day—Mr. Scott mixed some of this "Coca-Cola" syrup—the "Koke" wasn't then ready, and we had it to drink; and I asked him the purpose of having the "Coca-Cola" syrup and asked him why he had sent out and purchased "Coca-Cola" syrup. Young Mr. Mayfield said it was for the purpose of testing and I presumed that was to get the weight and the body and the color to make comparisons between "Coca-Cola" and "Koke." You ask if

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I ever had any conversation with Mr. Scott in regard to the paint being used; I worked for Mr. Garlick here, who was in the advertising business, and they used great quantities of paint; I noticed Mr. Scott was using ready mixed paint and I mentioned to him that I thought he was working at a loss by using ready mixed paint, when he could have the colors and mix it himself. I mentioned it to him on another occasion. He came home very late one night and said that he had been around to try to get this particular color of paint and that the only place he could get it was at Lee Circle, that was the only can of this particular color he could get. I then asked him the reason and again mentioned to him that I thought there was an extravagance that perhaps he hadn't realized and he said, well, they had to get this particular color on account of the "Coca-Cola" barrels—that they had to be similar—that's the truth, Mr. Dart.

Cross-examination by Mr. DART.

Before I began as seller of "Koke" I was transcript clerk in the district court. When I left there I went with Senator Jennings Garlick in the advertising business, [515] I think that was in 1902. Before I began as transcript clerk I worked for nine years for the Southern Telephone & Telegraph Company from messenger-boy to complaint clerk under Mr. J. J. Fowler, who is now Secretary of the Board of Civil Service Commissioners. I also worked as train auditor for the S. P. Railroad Company for about three months—until they discontinued the service. That was in 1910. After that,

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I was in the saloon business as proprietor at the Faust Hotel—the only man that ever made a success of it, Mr. Dart. After that, I worked for the Koke Company for about nine months. I am now forty years of age. I was with the Koke Company from October, from the time Mr. Scott returned from his California trip, until about three weeks after his death, which occurred on May 29, 1913. I was there in October 1912. Mr. Scott was boarding with me at 2023 St. Charles St., where I had been living seven years. Myself and my wife kept a boarding-house. I didn't keep a general boarding-house, but we did take some nice people. Mr. Scott was there from October until about three weeks before his death. Yes, sir, he got acquainted with me simultaneously with becoming a lodger in my house—no, two or three weeks previous to that, we first became acquainted with his wife through Mrs. Earhart. At that time I was doing nothing—unemployed at the time. At that time the Koke Company had begun it's operations and was a going concern. Mr. Scott was around selling stock, the organization was practically formed except there was lacking one member of the Board of Directors to complete it's organization. He had been on a trip to California and stopped in Texas on his way back, as I understand it from him. At that time the Koke Company had no location; during my acquaintance with Mr. Scott he rented the building at 807 Howard, from Sol Weil. Yes, sir; I went in with him then, I was with him all the time. I

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worked with him from morning *un time* night before its organization. I went with him when he went around buying the machinery, leasing the building and looking over headquarters around town here. He did not have anybody else with him. He and I did the thing alone. Yes, sir; he was engaged in the organization of the Southern Koke Company—rather he had it organized, they had no stock sold—never have sold any stock that I know of—but he was then prepared to do business. [516] I went in there as a sort of general handy man. He wanted me to go out on the road as a salesman in the beginning, and I refused because I didn't think I was qualified. That was before they began to make the drink in New Orleans. Then they began to make it here. No, sir; they didn't ship it from some other place. The product I first knew of from the time of the organization of the Company, the syrup was shipped from St. Louis and was mixed on Howard Avenue after the tanks were put up. I never saw the syrup made, that was made in St. Louis, as I understood it, but it was brought here in barrels and mixed on Howard Avenue and sugar added to it. It was then sold in barrels, half barrels, all size barrels. I didn't say I saw Mr. Mayfield, Jr. doing anything with a small bottle of "Coca-Cola," Mr. Dart, I said there was a small bottle that he had bought, or something, that young Mr. Mayfield had, a small bottle of "Coca-Cola" syrup—it may be that Mr. Scott bought it, I don't know that Scott did it, nevertheless, in those headquarters there was a

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small bottle of "Coca-Cola" syrup or extract, one day Mr. Scott poured out—, You ask if I am sure it was a syrup; he told me it was and I have never had reason to doubt his words. No, sir; it was not one of these bottles (indicating a bottle); it was syrup, we never used those bottles. This syrup was in an ordinary flask like,—I suppose it was like a whiskey flask. I don't know whether it was or not, they may have used it for gin, they put that up the same way. No, sir; it never had any name on it. It was in a white flask with no label on the bottle. I was told that it was "Coca-Cola" syrup, by Mr. Scott, the manager of the Southern Koke Co. Yes, sir; I hadn't told that part of the story before. Mr. Scott told me that Mr. Mayfield used that for testing purposes; what he meant by testing purposes, I don't know. I won't be sure whether Mr. Mayfield was there or not at the time he said that; I can't say that he was, but I know that he did do so. I am very well aware of the fact that Mr. Scott is dead. I was with him when he died. Young Mr. Mayfield, I don't think, was there at the time Mr. Scott told me that, but Mr. Mayfield handled that bottle because I saw it in his hand. Yes, sir; it was Mr. Scott who told me that the bottle contained "Coca-Cola" syrup. Yes, sir; I tasted it and it tasted like "Coca-Cola" only it was in uncharged water, it was [517] only ordinary river water. Curiosity lead me to taste it, the same as would get you. Yes, sir; we get down to the point that the syrup was in a white flask, unlabeled and Mr. Scott told me, at some time—I am

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not willing to swear in the presence of Mr. Mayfield, that it was "Coca-Cola" syrup and I eventually tasted it and it tasted like ordinary "Coca-Cola," only uncharged. Mr. Scott told me it was for testing their syrup—there was no "Koke" at the time this happened—that is, there was none turned out at that tank. No, sir; Mr. Mayfield himself never did volunteer the information to me that that was "Coca-Cola" syrup. So far as he was concerned I have no information as to what was in the bottle because he never told me. No, sir; no other living person ever told me what was in that bottle. It is a fact that the matter lies between me and a man who is dead. No, Mr. Dart, I want to correct that; a sergeant of police came in one day afterwards and I think that the similarity between "Koke" syrup and "Coca-Cola" was shown to him—I presume the sergeant would be a witness here too, I won't be positive—there may be another living witness. No, sir; I don't know whether he is going to be a witness or not. I am not in the counsels of the Coca-Cola Company and have no idea what has been done. No, sir; I don't remember the name of the sergeant, he is a member of the city police here, but what his name is I don't know; I will locate him if you want him. No, sir; I have not talked to him since the time he went in there nor did I call his attention to the similarity between "Coca-Cola" syrup and ours. I don't know anything about who did call his attention to it. Yes, sir; I did say his attention was called to it and I knew one day he did go back in the mixing

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quarters and there was some mixed back there, but who was there, whether Mr. Mayfield or the darkey or who, I don't know. You warn me I am exciting myself and exhausting my vitality in saying things nobody has interrogated me about; I tell you I pay for my exhaustion—mental—yes, sir. You say you are anxious to know how the attention of the sergeant was called to this similarity in color; because I happened to be present, but my memory is not fresh who was there. I can't be sure, I couldn't know whether Mr. Mayfield was there that day or not, but I know that he did take both kinds, and the question of the [518] similarity brought to his attention—the sergeant drank of both to show the difference. Somebody gave the sergeant a drink. Why, the sergeant had no purpose in calling on us. He came in and I gave him a drink, yes, sir. No, sir; I didn't. It was given him by whoever was in charge of the place. No, sir; I don't know who it was who gave him a drink. No, sir; there was not another living person connected with the Koke Company who ever told me what was in that famous flask outside of the dead man, Scott. I haven't seen this police sergeant for a year or eighteen months. No, sir; when I last saw him I did not talk to him about this drink "Koke." Why, I think I mentioned this sergeant of police incident to Mr. Hirsch, but I don't believe I told him the name. He is the only one that I ever know of having mentioned it to. No, sir; I do not know a man named Pierce. No, sir; I have not talked to anybody who didn't

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give me names, representing the Coca-Cola Co. Yes, sir; I told this police incident to Mr. Hirsch, too, like I told it here. To go back over it again, what happened was this; the policeman went into the shop of the Koke Company and got a drink—two drinks—a “Coca-Cola” drink and a “Koke”—and Mr. Scott invited him to take it, but who was back there when they went back, I don’t know. Yes, the dead man invited him to take it, he ran the works, the dead man. They got the drinks in the rear. I don’t know what happened back there. They got up a discussion about the difference between “Koke” and “Coca-Cola.” That story of the policeman had nothing to do with the syrup in this flask; they had drunk out of that syrup. Yes, sir, they drank some of the syrup out of the flask. We never had bottled “Coca-Cola” around the place. You ask if I saw the policeman get his drink that day; there was nothing to prevent me, the place was all open, nothing to prevent me seeing—and I happened to be looking—I am always looking. Yes, sir; I am always on the qui vive, I saw the policeman take two drinks, not out of the flask, but the hose was pretty free—if you want it in detail—then they poured some syrup out of one bottle and tasted that, and then tasted the other, as I remember, that is, the “Koke” syrup. I don’t think this happened fourteen months ago. Mr. Scott died in May 1913, and we are now in 1914—it was just previous to that. You say [519] I am a little behind, that, May, 1913, is considerably over 14 months ago; well, it is 14 months ago. No,

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it didn't happen the day Scott died, it was just previous to that, may be perhaps a week. Coming back to our policeman a little while, I saw him go in the works. They were about twenty feet back of the office and I was about twenty feet from the policeman. Yes, sir; I was watching that thing, naturally,—nothing else to do. There was no business, just waiting for orders. No, I have no idea why that policeman came in, nobody sent him, he was just coming along. I suppose it was just the policeman's habit of going where there is a drink. I saw Mr. Scott, who is dead, mix a glass out of this flask containing the "Coca-Cola" syrup first, then he made another drink out of the "Koke" syrup in another glass; and the policeman tasted them both. No, he didn't drink them. I haven't seen any difference between "Coca-Cola" itself and the "Coca-Cola" syrup, I can't detect any. Then the policeman came back and Scott and the policeman talked about it, and I heard the conversation, which was to the effect that there was no difference, and the policeman said that's the same as "Coca-Cola."

Now coming back to my employment. The establishment opened for business, I think, sometime in November 1912. Scott held off sending his men out, so he figured, the middle of December was coming on, Scott did; I don't know exactly what date he started them out, I wasn't manager, I was simply salesman. Yes, sir, in November we were on Howard Avenue. In that shop which was opened, there was Scott and myself and Mr. Mayfield's son,

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J. C. Mayfield, Jr. all the time, but there was nobody else. They started first to buy some barrels—got the tanks up first, then bought the barrels. The syrup came in and they mixed it with sugar, added the extract that they had received from St. Louis, and added the glycerine, and then went ahead. They didn't carbonate it; it was sold in extract, to the American Bottling Company at first, and, afterwards, to the Crescent City Co. About that time I was sent out to attend to the saloon business. I think it was later than October or November, I won't be sure about the dates, I can't call that to mind because I have no memorandum of that fact, but during the course of [520] my connection with them, shortly after I began to see the city trade, I mentioned to Scott that the bartenders complained that there were no labels on the bottles they were putting out. You ask what the Koke Company had to do with the bottles ; well they were responsible, we were supposed to guarantee them the city trade—I was working for the Southern Koke Co. While it is true that the bottling company attends to the bottling, nevertheless they guaranteed to the bottler that they would work up a trade and those bottles had no labels on them. Then came the discussion of making the label. I mentioned that the trade, the bartenders, complained that there was no label, that they wanted a label so it would look similar to "Coca-Cola" packages, that was the object, that's what they were working for. No, sir, I couldn't tell you some of the bartenders who told me that; I am not

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working for the Coca-Cola Company or the Koke Company and I am not giving up my time working up details of it. You again call my attention to wearing out—exhaustion; and I again tell you I pay for it. No, sir; I couldn't give you the names of some of the bar-keepers who suggested that they wanted an imitation label. No, I couldn't give you the name of one of them. No, sir; I couldn't tell you the bar-room in which they were. You ask are they all dead too, those fellows; they may be, I haven't been around to see them. No, sir; I can't remember the name of a man that suggested to get up this counterfeit label. "XQ. 195. Anyhow, you brought back the message of the bar-keepers that they wanted a label that looked like the label of 'Coca-Cola' packages." "A. No, they said they wanted a label on it; I told them there was a label similar—and Mr. Scott told me the Texas label was similar—he already had the cuts of the label in his possession." "XQ. 196. Which is true, Mr. Witness, that the bar-keepers told you that they wanted a label imitating the 'Coca-Cola'?"—"A. Yes, sir;—they didn't say that they wanted to imitate 'Coca-Cola,' they wanted it to look similar, so that they could put it across the bar for 'Coca-Cola'—that's my language, Mr. Dart." Yes, sir; I still stick to that testimony. I saw the cuts, some of the cuts of the labels. Yes, sir; I knew they were in existence—. Some of the cuts for the labels I have identified. The label on Plaintiff's Exhibit #105 looks to me like it is made from the cut. [521] I presume that

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cut was in existence before I began to go out and sell "Koke" to the trade in New Orleans, Scott had some made at Romanski's and some old ones. He must have had some made at Romanski's prior to beginning work in New Orleans because when I made the request for the labels he had them produced. Romanski made some of the cuts—made pretty near all of Mr. Scott's; but he had some, I suppose you would call it pattern cuts, from Texas. I suppose that was the model on which all of the cuts were built. So far as I know Romanski is the only man that made any for Mr. Scott. Romanski is an engraver and he hired a label firm on Canal Street to print the labels. Then Scott and I went to Houser to get the labels. I walked over there and found Mr. Wm. Speyer the foreman. Mr. Scott told him that he wanted, I think it was 50,000 labels, showed him the cuts and told him he wanted them the colors of the "Coca-Cola" labels. Mr. Scott said that to Mr. Speyer, that's my recollection of it. My idea was that the insert "Coca-Cola," was in red. Mr. Scott and Mr. Speyer were talking about the color of the background, whether it was black, dark purple or blue. Both of them were printers and used more technical language and finally Mr. Scott told me to go to the corner and buy a bottle of "Coca-Cola" at the saloon and bring it over here. I brought it over and gave it to Mr. Speyer. They examined it and I believe they decided it was a dark purple—I am not sure whether it was dark purple or dark blue. After they got finished I gave the

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“Coca-Cola” to the stenographer and she drank it. I guess the bottle is laying around there yet. “XQ. 218. The object of the testimony you are giving, as you understand it, is to show that in your presence Scott and Speyer—the printer of Houser—had in their hands a bottle of “Coca-Cola,” with this label, and that they were trying to get, in type and in color and in shape, a label as near as possible to the ‘Coca-Cola’ label; is that what you are trying to tell us?” “A. That’s Mr. Scott’s orders, to get it as near like the ‘Coca-Cola’ label as possible.” Speyer is still living and is the manager for Houser’s. I don’t know anything about whether he has been seen in connection with this or not. I can’t say that Plaintiff’s Exhibit #105 was turned out as a result of this conversation, but a label similar to that was turned out—50,000, if I remember right—McCarthy Moore’s name was on there, he was president then—there has been two presidents since then. [522] I don’t know what color this label is. I think Scott and the printer said it was a dark purple, I am not sure whether dark purple or blue. No, sir; I am not able to state whether the color of the label on Exhibit 105 is blue or black. I am not color blind, but I can’t tell whether it is dark blue or purple. The labels came in due time and were delivered to the Koke Company, Mr. Mayfield, Sr., or Mr. Boyd was there and passed on them and said they were all right. They said over in Texas they didn’t use labels because the bar-tenders all complained that they clogged the drains in the ice boxes over there.

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Yes, sir; I went out selling "Koke" for these people as their principal salesman in this territory. I believe I sold a lot of it. I told the bar-tenders whom I saw anything to effect a sale. Mr. Scott was frequently with me when I effected a sale. No, sir; I did not tell them it was "Coca-Cola." My first argument was to patronize home industry, that this was bottled here. Sometimes they would say "Well, you know the folks want what they call for, they want 'Coca-Cola,' and we can't put that across." I told them then that the label was the same and that the product was the same, that it was made by Mr. Mayfield and I showed them this affidavit of Mr. Pemberton that I had, showing that he could make the same syrup the Coca-Cola Company makes. You ask if I then suggested to the bar-keepers that they could sell it; that was up to themselves. I told them what they could do, there was a similarity of labels there, that it looked like the "Coca-Cola" package, made by the same man, that we had an affidavit to that effect from Mr. Pemberton to prove that he could make "Coca-Cola"—that this was "Coca-Cola" with the slight addition of celery, and explained to them as I have explained to you, that the addition of the celery was only put in there to overcome the patent laws and Scott, whenever he was present, would always say "that's good for the nerves." Having fertilized the ground, so to speak, by telling these bar-keepers all I have just told you, I balked at suggesting to them to commit the actual fraud—I never advised them to commit the actual

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fraud. "XQ. 242. You mean you advised them to commit the act of fraud?" "A. No, sir; I certainly did not." My conscience wouldn't stand for that. No, sir; I never thought that, by suggesting to a man how to commit a fraud, it would require nothing [523] further from me to do the fraud; I wasn't lawyer enough to do that, I never thought of that, I sold "Koke" around here on my own personality. You ask me if either Scott or I suggested to these people to sell "Koke" as "Coca-Cola"; I don't know what Scott done. I can answer for myself only. Oh, no in my presence he never did suggest to a man to sell it for "Coca-Cola," I never heard him tell a man to take it and sell it for "Coca-Cola." Answering your question, he may have said he could sell it for "Coca-Cola" but I didn't take any notes on Mr. Scott's conversation, I kept no diary of that. I don't know whether it occurred or not. In any event I am not willing to swear that I heard Mr. Scott tell any of these people that they could sell it as "Coca-Cola" and I don't believe Mr. Scott would tell them that. I think he was too much of a white man to do that.

I worked for the Koke Company about three weeks after Mr. Scott's death. Col. Jas. Wright was then acting in every capacity. He is alive and is Secretary of the Pan American Insurance Company. He told me not to do the city trade any more, that he had brought a man here named Dalton, to succeed Mr. Scott and asked me to go with this Mr. Dalton and sell stock to my friends, to all my selling friends

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around here. Well, I didn't do it and I never went near the office any more. Yes, sir; I quit, I simply kept away. I wasn't going to go around here and sell my friends \$25.00 worth of stock and stick them with a concern of that kind where the widow had got the worst of it and everybody else. By the widow, I refer to Mrs. Scott. Yes, sir, I believe she was present at some of these interviews between her husband and me. She was not present at all of them, but she heard a great many of them. She tried to dissuade Scott from putting up any more money to keep it going. She didn't like the line of business—just why I don't know, but she thought it was going to bring him in contact with the saloon trade. She didn't realize at the time there would be another bottler. He was a practical printer and if he was going to invest his money in anything, she wanted him to go into that. That was the objection. He told his wife what I told you awhile ago about the soda-fountains and the continuous calls for "Koke"—instead of giving them "Coca-Cola" they would give them "Koke"—and all the money that there was in it. You ask if I want you to understand that he had explained to his [524] wife in my presence that it was a sort of common swindle; I didn't call it by that name, you can call it that way, but I can bring a dozen witnesses to prove that he did. If it is a common swindle you can take it that way. Yes, sir, Mr. Scott explained to his wife that this was a straight out fake he was in—if you want it that way—unfair competition, fake, unfair competition. I don't know where

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I first heard that word, unfair competition, maybe I read it in one of your briefs when I was down at the court. No, I am not in the habit of reading your briefs. I don't mean your briefs either, but your cross-examination. I am proud of it, too. You ask me again if I think I heard of that word "unfair competition," in one of your briefs; I didn't say it was yours, I say I may have read it in one of your briefs. I appreciate the value of an oath and what I am stating is the truth. You asked me where I had heard that word "unfair competition" and I told you it may have been in one of your briefs. You say that the word "unfair competition" is an unusual word for a layman to be using and you ask me again if I still think that I read it in one of your briefs; I didn't say I did, I said maybe I had—I don't know where I read it, perhaps I read it in the newspapers. No, I didn't hear it the last two or three days talking to Mr. Hirsch; I haven't been talking to him that much; nor talking to the detectives of the Coca-Cola Co. No, sir; I didn't get the word like we get our features, and habits and forms and faces, by heredity, nor did I get it out of one of your briefs. I do a little reading, Mr. Dart, I don't have to depend on the Coca-Cola Co. I don't know where I got the word.

Coming back to Mr. Scott and Mrs. Scott's family conversations, all those conversations took place at the house. Sometimes she came to the office and sometimes they took place up at the house. But those confessions of guilt and stirrings up of conscience

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occurred at home mostly. No, sir; they never had these conversations at the dinner table, I never ate with them. They talked together mostly in my kitchen. Mrs. Scott came to me and told me in the very beginning what Mr. Scott had invested in and asked me what I thought. I told her I didn't think it was going to be a paying proposition, in New Orleans, there were too many bottling companies here. He said she didn't want him to go in anything like that and he had went and put up \$5,000 in this thing and he [525] was a printer and she wanted him to start a newspaper; she thought that may be this business would bring him in contact with the saloons—she asked my opinion of it and I told her I didn't think it was going to be a paying enterprise, and Scott told her about being in Texas and around the soda-fountains here and noticing that when they wanted "Coca-Cola" they would say "Give me Koke" and he put in time day after day at the soda-fountain before he invested this money. That was the way he assured her. Now, I wasn't the only one heard these arguments come up, there were several people around the house. I don't know that that is all he told her, but that is all relating to that subject that I can recall to mind. You ask if I mean to say from this that he was telling her this was a fake, an imitation and a fraud; you call it by fraud—no, he didn't feel safe about it, that it was a good clean open and above board proposition. No, sir, he didn't. He told me that his conscience hurt him after he had put up the \$5,000. No, mine didn't hurt me, I didn't put up a

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dollar. In any event, Mrs. Scott tried to keep him out of this fake swindling business, but she didn't succeed. Mrs. Scott tried to dissuade him, not on one occasion, but on several occasions, from going into this business. These happenings all occurred at the house, and it was at the house that I heard her tell him what I have told you. No, sir; he didn't say that this business was a fake nor did he ever say it was a swindle. He asked me about unfair competition—no, sir; he never asked me about unfair competition, he got to talking about his general business, had the dumps—as soon as he got the thing going he was going to unload, he didn't feel right about it himself, that he considered it unfair competition—that wasn't the exact language he used, it was similar language. Now, this conversation occurred at night on the street with just he and I present. Yes, sir, I am reminded that he is dead and that you have no way of contradicting that. This occurred about 7:30 or 8:00 o'clock at night when we rode down to the office.

Coming back to Mrs. Scott, Mr. Scott explained to her that the reason for his investing his money in the Southern Koke Company was that he had been in Texas at different soda-fountains, that he had been out in New Orleans at soda-fountains and had watched and noticed people who wanted "Coca-Cola" would invariably ask for "Koke," and it was on [526] the strength of that imitation—if you are pleased to call it, or whatever you call it, that he put his money in it, that he wanted the profits off of other

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men's mistakes. Yes, sir; he told Mrs. Scott that it was on the faith of that imitation, not in my language though, he didn't call it "fake"—you can take whatever interpretation you want to. Yes, sir, Mr. Scott, in my presence, told his wife that he had put his money into that concern after he had watched the soda-fountains in Texas and elsewhere and found the people were calling for "Koke" and "Dope" and getting "Coca-Cola" and he felt that this was going to be a good investment on that account. He felt it was going to be a good investment to put his money into a thing called "Dope" or "Koke" with the idea of getting that trade. Yes, sir, that is what he told her. I don't know when those conversations occurred between Mr. Scott, myself and Mrs. Scott; it was any time between October, 1912, and March, 1913. Yes, sir; Mr. Scott was a gentleman, an honest man, and, so far as I know, a good man, and I don't think he would be capable of committing a wrong. Yes, sir; I went to a man named Rausch and another man named Morero in company with Friend, Gillon and Cain. We three went to Rausch and the same three went to Morero. It's only a distance of a few blocks. Rausch's place is at Clouet and Dauphine Streets and Morero's is at Montague and Dauphine. We four went to Rausch's place between the 13th and 15th of June, 1914, and on the same date went to Morero's. Cain, who was formerly a solicitor for the Koke Company, went down to Mr. Rausch's and asked Mr. Rausch if he remembered his having called on him to sell him "Koke." Mr. Rausch said, yes.

(Deposition of W. J. Cheevers.)

Cain asked if he remembered the argument that he had advanced to effect the sale of Koke. Rausch said, yes. Then Cain said "You remember me telling you it could be used for 'Coca-Cola'?" Rausch said, yes. That was the substance of the conversation and the same thing occurred with Morero. I understand that Cain was thereby telling Rausch and Morero respectively, in the presence of two witnesses, that he, Cain, had told these men that he could use "Koke" as a substitute for "Coca-Cola." I understood that was the object of that visit. Yes, sir, that was contrary to anything I had done while I was a solicitor. No, sir, I would not do any such trick as that while I was a solicitor—I didn't do it. [527]

Friend and Gillon, I think, are representatives of the Coca-Cola Company, I don't know whether you would call them detectives or not. They told me they were representatives of the Coca-Cola Company to make an investigation of substitutions. Cain is now night watchman for the L. & N. Railroad Co. No, Rausch did not say that he was substituting it, Cain didn't ask him that far, just asked if he remembered it and giving the order and the language he used. Yes, sir; Morero also remembered it and said, "Yes," to Cain's question. Yes, sir, at Morero's, I believe I had a bottle of "Coca-Cola," there was no "Koke" drunk, I would have drunk that, the others drank a small glass of beer. I got acquainted with this man Friend just a day or two before that. He found me at home at 2023 St. Charles St. and introduced himself to me. That is not the first time I had ever seen him.

(Deposition of W. J. Cheevers.)

I think Mr. Gillon first asked if I had any objections to seeing Mr. Friend and I told him, no. He told me Mr. Friend was at the hotel Monteleone and asked if I would go down and see him. Gillon introduced himself to me. I presume he located me from the city directory. He told me he was representing the Coca-Cola Company and that Mr. Friend, the representative of the Coca-Cola Co. was here and asked would I call on him at the hotel Monteleone. Before I went down Gillon asked me if I had any objections to tell him the name of the employees of the Southern Koke Company, while I was in their employ, and I told him I had no objection in the world. He knew I was out of their employ then. I didn't have any talk with Gillon, except he asked if I would come down and see Mr. Friend. Previous to this time nobody that I remember of talked to me about the same subject matter. You asked if I made any secret of my connivance with this desperate fraud going on here; I never connived at a fraud in my life. I don't know whether what I have been talking about was a fraud or not, the Court is going to say that. I never said anything about my conscience hurting me. You ask if I believed it was an honest piece of work I was doing; I was getting \$75.00 a month out of it and honestly earned it. No, I didn't tell you I saw Mr. Scott imitating "Coca-Cola." I told you he was calling attention to the similarity of "Coca-Cola" syrup to their syrup. [528] I never saw him substituting anything. Yes, sir, I called the attention of the bar-keepers to the fact that "Koke" was similar

(Deposition of W. J. Cheevers.)

to "Coca-Cola." You ask what was my idea in telling them that; why, certainly, that's fair enough, tell them it's as good as "Coca-Cola"—sure, I was honest enough to draw my money and spend every dollar I got for the advancement of the Southern Koke Co. I never brought a dollar home in my life and that's how honest I was. Yes, sir, I thought it was honest to take this stuff to the bar-keepers and tell them what I have been telling you; namely, that the stuff tasted like "Coca-Cola," was the same as "Coca-Cola," was as good as "Coca-Cola," that there was no label on the bottle—I showed them that the label looked like the "Coca-Cola"—also the thing on top and also that the bottle looked like "Coca-Cola." You ask if, having shown them all those things and having lead the horse up to the water, I didn't ask them to drink. Oh, you bet your life they always drank and Mr. Scott was right there when I advanced my argument. Yes, sir, I considered that was an honest man's honest actions. Yes, sir, I then went with Scott to the printer and went out and bought a bottle of "Coca-Cola" at his order. Yes, sir, I heard him tell the printer to substitute the color and everything else as near as he could to the "Coca-Cola" style. Yes, sir, I thought that was honest at that time. Yes, sir, I know now from my conscience, that if that is an exact reproduction of the "Coca-Cola" label, it is wrong, that they have no right to masquerade this stuff as "Coca-Cola" if they don't make it as "Coca-Cola." Yes, sir, it required something more than my first breath of honesty to know that it was wrong.

(Deposition of W. J. Cheevers.)

Mr. Scott wanted me to go on the road in the very beginning and I absolutely refused and the only way he ever got me to go out and sell "Koke" was by telling me of the ill-treatment,—he told me the way they worked on the conscience of everybody they wanted to work—that Mayfield had been robbed by the people who finally purchased the "Coca-Cola" and this was doing no wrong to people who had robbed somebody else. Yes, sir, Mr. Scott salved my conscience by telling me of the hideous outrage perpetrated on Mayfield by these "Coca-Cola" people. He told me that Mayfield had worked for old Dr. Pemberton, that the formula was put up for sale and I believe finally sold for something like \$1,300, and that he had been double [529] crossed, got the worst of it and suffered and had given up his life to going around—had made a sacrifice of himself getting even with the Coca-Cola Company, that's the way he enlisted my sympathy. "X. 429. Then your sympathy is enlisted with anybody crying out for vengeance, although he had no cause for vengeance"? "A. That's it, that's why I am here." No, sir, I am not getting vengeance on the "Koke" people, square deal and honesty. My idea is to rectify the wrongs I did unconsciously, if you want to put it that way. Yes, sir, now out for a square deal and honesty. You say the honesty being to get the Koke people in the hole after I had honestly tried to beat the "Coca-Cola" people; well, I knew a letter was sent to Mrs. Scott—I knew up to that time there was not a dollar of anybody else's actual cash in there except \$200 of the

(Deposition of W. J. Cheevers.)

Maytrag's money. I knew Scott bore a burden—his wife told me they got her to sign over his entire stock to them. Nobody had put in a dollar and Scott was the only sufferer. You ask if I am out to rectify that injustice; I am not out to rectify anything, I am here to tell the truth, no matter who it hurts. I know nobody connected with this concern. When I said a while ago I was out for vengeance, I didn't mean that, I have no interest in the matter one way or the other. No, sir; I wouldn't like to see the Koke Company downed now, with Scott's death my interest ceased. No, sir; I don't care a copper cent how they go. Yes, sir, I recognize now that I am making this confession in the interest of a square deal. The gentleman there honestly came to me and asked me this question, and I am brought here as a witness—that is, they asked me if I worked for the Southern Koke Company and also the names of the ex-employees and their addresses. You ask if they also told me that this Koke concern was imitating and substituting for "Coca-Cola"; well, they didn't tell me anything. You ask if I knew that already, that they were imitating and substituting "Coca-Cola"; I didn't know what the Koke Company were doing or had done since May. During my time I knew in my own way that they were doing it, but they never advertised it. When Friend asked me the names of the ex-employees I said I would tell everything I knew, make a confession to him of everything I had been doing. I had no reason for not telling him. No, that didn't ease my conscience. You ask if I felt better after

(Deposition of W. J. Cheevers.)

having spit it out; if you want to put it that way, put it that way. No, I didn't [530] tell him I was prepared to spit it out, I didn't tell him anything—he asked me to give him a statement of my connection and I did. No, sir, I didn't tell him I was glad to get even with that crowd of damn rascals; he asked me if I would make a statement of my connection with the Southern Koke Company and I told him, certainly I would. I made a statement of my entire connection. You say that this man was not interested in having me say that the Southern Koke Company was an honest concern and sold good stuff and would not have examined me as a witness if I had said so, and you ask, therefore, if he didn't want me to break down the Koke Company; this gentleman told me he only wanted the truth, and nothing but the truth, and I told him that was all he could expect and was going to get. You ask if I have lived long enough to know all policemen and detectives want only the truth; I have never dealt with policemen nor a detective. Yes, sir, I gave them Cain's address and I went and saw Cain. No, sir; I didn't tell Cain what I told them, nor did I tell him when they came down, to give it away. Yes, sir; I brought them down to see him and introduced them to Cain. That was the first time I had ever met him in his home in my life. Never having met him in his home before, I got him to go with me down to the hotel. We didn't talk to him at his home because he had no place in his home to entertain anybody, so we took a walk and asked him did he have any objection to mak-

(Deposition of W. J. Cheevers.)

ing a statement. Friend was with us at that time. You ask if he went along with us to capture the game; that's not fair to use language like that, you say, "to capture the game." I don't know what he went there for. He went and we asked him if he had any objection to making a statement of the work he had done for the Southern Koke Company. No, sir; I had not told him I had made a statement up to that time. In addition to Friend and Gillon, I have also seen Mr. Hirsch *on* connection with this matter. I saw him yesterday,—he simply asked if I would be here to-day to testify. I saw him last evening at the hotel. He sent for me, rang me up and when I went down he asked me if I would come down and I told him I would and when I went down I had a talk with him and he asked me if I would come up here this morning to testify. Yes, sir; he could have asked me that over the phone if he had wanted to. Yes, sir; it's as true as everything else I have here stated, that I never said anything to Mr. Hirsch except that I would be [531] here this morning. Yes, sir, that's the absolute and solemn fact. I have no enmity against Mr. Mayfield. No, I don't love him like a brother. I don't dislike—I haven't anything against him. You ask if Mr. Mayfield ever put up any of this fraudulent work I was talking about; I knew very little about Mr. Mayfield. I said he asked me to sign an affidavit stating that I had never sold "Koke" for "Coca-Cola" and that I refused. I know I have sworn that I never had sold "Koke" for "Coca-Cola" but I wasn't going to sign any statements for

(Deposition of W. J. Cheevers.)

Mr. Mayfield because I didn't want to put my name to it. He had a form of affidavit there and brought me down under a false pretense. He didn't come out like a man and tell me over the phone what he wanted, but I have given these other people the contrary because they came as men and asked for it. I have given them a statement that I sold "Koke" as a substitute. I am certain, I know it was so, "XQ. 495. And yet you have sworn positively it wasn't." "A. There may be a contradiction, but the Court will find the general tone is honest and sincere, the Court will so look at it." Mr. Mayfield brought me here under a false pretense—that he had a letter here for me to see, and he flashes an affidavit—he had the jurat ready to be filled in. I don't know what the affidavit was but he asked me what I had sold, if I had sold it, and I told him that I would make up a statement of my own. I told him I would not give him any statement at that time, but that I would draw up one of my own, and I went and reported to Friend and Gillon that he had been to see me, and told them what I told him and what he asked me.

Now, coming back again to the paint question, Scott was using a ready mixed paint in cans, which is considerably more costly than mixing it, and I told him I thought it was a loss, that he was using bad judgment in that particular thing, and that it was a leak that he didn't seem to notice; that if he got the ingredients and had them mixed in five gallons or three gallons at a time he would save money instead of sending out and buying five gallons of this ready

(Deposition of W. J. Cheevers.)

mixed paint. Mr. Scott said he had to get a particular color. That's all. No, sir, I never told Mayfield anything about this. Scott went out one day to Brinkley's and he came back—in the neighborhood of Brinkley's shop there was some kind of [532] a paint place, which was the only place in town he could get that particular color—I asked him again why he was doing it and he told me he had to get the same color the Coca-Cola folks had. Yes, sir, Mr. Scott told me that. I don't know whether there was anybody present or not when he told me. No, sir, I can't recollect another living person that heard that statement. I wouldn't know positively when it was made, sometime in November or December, 1912. No, I didn't think that was honest at that time, just as I told you frequently. No, sir, all the time I was in this thing I didn't know I was in a dishonest business, I didn't consider it. I told you just what he told me, the argument that I advanced. I had no orders from Scott himself as to anything, I went out and sold "Koke" on my own personality,—that is, on my friendship and acquaintance, and these arguments I have been repeating here, that I told these people. No, sir, Scott never did tell me to go out and sell it as a substitute, but he was there frequently when I made sales and heard my arguments. Yes, sir, I suppose you might summarize this thing in this shape; I went into a thing which I early discovered was built upon the idea of supplying a drink to take the place of calls for "koke" and "dope"; then I saw them using "Coca-Cola" syrup for some purpose—

(Deposition of W. J. Cheevers.)

I didn't quite catch on to, yet I saw them printing an imitation label which I distinctly know was dishonest; then I saw them using a paint which I distinctly know was dishonest, if what I saw was true.

"XQ. 520. Then you yourself told this Adam and Eve sort of story to the bar-keepers—you didn't tell them to do anything wrong, you told them the contrary; that was the situation. Doing all of that, you start off with your deposition to me by saying, so far as you are concerned, you don't know whether it was dishonest; you now say you did know it." "A. I didn't say that to you at all." Yes, sir; I still think that the work I did was honest on my part. I had nothing to do with the judgment of the Southern Koke Company. I was simply put out to sell "Koke" and I done it. Those things came within my observation but I had nothing to do with them, I had no connection with that department of it. Yes, sir; I was still going on earning my \$75.00 a month as solicitor, but I was only a solicitor for a short time. Mr. Scott paid me out of his own pocket. You will find I appear on the payrolls of the Southern Koke Company for no more than two months. Me paid my [533] salary. When I was not getting Mr. Scott's money I got the Koke Company's. Yes, sir, somebody paid me from October to May. No, sir, I was not perfectly willing to continue and did not continue until Scott died; I resigned twice. You ask why; well, I quit Scott twice for different reasons. I don't believe it's relevant here why I quit. Mr. Mayfield was not in charge when I quit. It was

(Deposition of W. J. Cheevers.)

Major Wright who was in charge. When he wanted me to go out and sell blocks of stock to my friends I wouldn't do it and simply kept away from down there. Yes, sir, that was the time I made up my mind he was asking too much of my conscience, because they had imported a man to take charge of it—a man from Birmingham—didn't know the conditions and I felt sure the thing wasn't going to succeed. I was perfectly willing to sell the stuff to the traders, but when it came to going into my friends' pockets with stock, I revolted. Then I quit.

You ask what those people were doing with the "Coca-Cola" syrup—that little flask which I said I saw; I don't know what they were doing with it, but Scott told me young Mayfield used that—I asked him what he was doing with "Coca-Cola" syrup here, and he said he used it for testing against their stuff. No, sir, I don't know that of my own knowledge and never saw any of that going on. At present I am unemployed. I have an application in my pocket endorsed by Dr. Howard for a position in the Public Health Service. Yes, sir, I am keeping the boarding-house here.

Deposition of John Cain, for Plaintiff.

JOHN CAIN.

Direct Examination by Mr. HIRSCH.

I am 34 years of age and reside at 2108 Iberville St., New Orleans. I was connected with the Southern Koke Company of New Orleans about April, 1913. I was employed by Mr. Scott. I called on

(Deposition of John Cain.)

bar-rooms, grocers, confectioners, in other words, wherever I could sell the stuff. Yes, sir, I was instructed by Mr. Scott how to approach the trade. Mr. Scott instructed me to go out and sell the stuff—sell the “Koke” on these instructions—I could go out and sell the “Koke” the same as I could “Coca-Cola”; and he gave me the formula or affidavit, that the formula was the same as the “Coca-Cola,” and tell them it was the same as “Coca-Cola” and for me to go out and sell it and tell the trade that they could sell the “Koke” the same as if it were “Coca-Cola.”

[534] He told me there was very little difference in the label—the only difference being that “Southern Koke Company” was on one and the other had “Coca-Cola” on it—the labels was the same—you couldn’t tell the difference except by close inspection. He told me to tell the trade “Koke” was made at home here and “Coca-Cola” away from here—“Koke” employed home labor. I don’t recollect any other instructions. I sold “Koke,” I guess, about two months. Yes, sir, I used the arguments I have described. You ask at what places did I talk and use any of the arguments I have described; well, I called on Thomas Rausch, Mr. Rootmyer and Mr. Ed. Morero—pretty near everybody down there. Yes, sir, I certainly did use those arguments. After the death of Mr. Scott I remained in the employ of the Koke Company one week. Yes, sir, on or about the 23d day of June, 1913, I accompanied S. Friend, B. J. Gillon, and W. J. Cheevers to the saloon of Thos. Rausch. I went in to Mr. Thos. Rausch and asked

(Deposition of John Cain.)

him what I told him when I tried to sell "Koke" and he told the gentleman in my presence the argument I used in selling this "Koke," which was that I claimed it was the same as "Coca-Cola," and that the only difference in the label was that it read "Koke," and that it could be handled over the bar the same as "Coca-Cola" without the trade knowing the difference. On the same day I accompanied S. Friend, B. J. Gillon and W. J. Cheevers to the saloon of Ed. Morero and the same thing happened at that place.

Cross-examination by Mr. DART.

I am a night watchman. No, sir; I was not such before I became a seller of "Koke"; I ran a saloon for myself at Royal and Montague Streets. Well, I will tell you how I came to be employed by the Koke people, through Mr. Cheevers and Mr. Foster is how I came to be employed there. They happened to come on back Canal and Clairborne to Mr. Felix Raptman selling the "Koke," and, through them, that's how I came to go to work for the Koke Company. I won't say positively I worked for two months, but about two months. You say that I was employed, as you understand me, for the purpose of running in this stuff as "Coca-Cola"; I will answer that I was, yes, sir, and Mr. Scott told me to sell it—to sell it the same as if I were selling "Coca-Cola," the trade wouldn't know the difference. You ask if he told me to sell it as "Coca-Cola"; well, yes, sir. He told me there was very little difference in it, it was made out of the [535] same formula—I was furnished with an affidavit by Mr. Scott. Yes, sir;

(Deposition of John Cain.)

I told these various people I went to that it was counterfeit "Coca-Cola"; I told them they could sell it and the trade wouldn't know the difference whether it was "Koke" or "Coca-Cola." That's what I stated to Mr. Morero and every place I went into, and Mr. Rausch, and this other man, Rootmyer. No, sir, I can't remember who else I went to and made this statement to,—a good many down there, though, that I did go to. You ask if I sold "Koke" to many people; I did, yes, sir. You ask who I sold it to outside of the three I have examined; well, there is a good many down there—a good many down town I sold it to. No, sir, I can't remember who, but I can find the places, I know where I sold it and the argument I used. Yes, sir; I lived down in that section all my life and know every inch of that territory, but I can't recollect the names of any of the dealers I sold it to except those three; but I can go to every place I went to. Yes, sir; I certainly did go with these gentlemen, whose names I have given you, to Mr. Rootmyer's place. "XQ. 26. And did he remember the circumstances, too?" "A. He did." Yes, sir; I went into Rausch's place with these three gentlemen and I asked him to tell those gentlemen what it was I told him when I was selling the stuff. There is no doubt about that, that is just what occurred, yes, sir. And thereupon he repeated to those gentlemen what I had previously told him. Yes, sir, I am sure of that. No, sir; it couldn't have occurred any other way. I simply kept silent and invited him to tell them what I had said. The same thing

(Deposition of John Cain.)

occurred at Morero's. I kept silent, after telling him to tell the gentlemen what arguments I used, and thereupon those gentlemen told these witnesses that I had told them that this was made just like "Coca-Cola" and couldn't tell the difference. That is what was sold to be used as a substitute to the trade for "Coca-Cola," and that they bought it under those conditions. No, sir, they didn't tell these gentlemen that they sold it under those conditions. I don't know what they did do with the stuff when they bought it. No, they didn't confess that they sold it to their trade as "Coca-Cola"; they haven't said how they sold it. I haven't sold a case to Mr. Rausch, because he didn't take it at the present time and said he would see further, but he didn't take any. No, sir, he never sold "Koke." No, sir, I never actually sold any to Mr. Rausch, nor did I ever actually sell any to Mr. Morero nor to [536] Mr. Rootmyer. "XQ. 47. So that when I asked you the question whether those gentlemen said that they had deceived their trade by selling it that way, you knew that they had none to deceive with." "A. They didn't, but they handled it afterwards, through whom I don't know." The way I know they handled it is because Mr. Rausch told me that he handled it. He told me that that day I went down there, he has got a bottle down there that you can see it—it's syrup—a bottle of syrup. It's the syrup up there—"K-O-K-E" as big as life. Mr. Cheevers worked for the Southern Koke Company, the same as I did; I didn't know him at all until then. He

(Deposition of John Cain.)

is a friend of mine now, yes, sir. No, we have never had a talk about those days; Mr. Cheevers came to my house, him and two other gentlemen, whom I don't know—I had been in bed, and got me out of bed and walked to the corner with them and asked me if I would make a statement, and I told them I would. They told me they wanted the truth and nothing but the truth, and I made that statement. No, sir; Cheevers hasn't said anything to me—hasn't said a word. They told me suit was on and I worked for the Southern Koke Company and to make a statement how I sold the "Koke," which I did. They wanted to know how I sold it—what arguments I had used to sell it. No, sir, they didn't tell me that they knew what kind of arguments I had used; they didn't know what kind of arguments I had used to sell it; and thereupon I told them what I have told you, certainly.

To go back over the story: Yes, sir; I told those men Mr. Scott employed me as a salesman and told me to go out and sell it to the trade as "Coca-Cola." Yes, sir; that it was like "Coca-Cola" in taste, that it was made by the same formula. Yes, sir; that the label was the same, and that nobody could tell the difference only by close inspection. Yes, sir, I accepted the employment under those terms and went out and sold goods just as I stated to you. You ask if I went out and sold the goods which I knew was counterfeit; I was just taking orders from the men—just as I was told to sell it. No, sir; Mr. Scott didn't tell me he was handling "Coca-Cola"; I knew

(Deposition of John Cain.)

he was handling "Koke," that's all I knew; I was told he was handling "Koke." I knew he wasn't handling "Coca-Cola." No, sir; when he told me to take this stuff out and sell it I didn't know he was hiring me to go out and sell something which wasn't "Coca-Cola." [537] He furnished me with an affidavit which said it was the same formula as "Coca-Cola," which I showed these people. You ask if I didn't know that it was not "Coca-Cola" when I went out to sell this stuff; I didn't know what it was—all I know, I was selling "Koke," I didn't know what "Koke" was. You ask me again if I didn't know when I went out to sell it that I was not selling "Coca-Cola"; I only had an affidavit saying "Coca-Cola" was made out of the same formula as "Koke," and I showed that to the trade, I didn't know what I was selling. You ask again if I didn't know that I was not selling "Coca-Cola"; I don't know what it was. I knew I was selling "Koke"—"K-O-K-E." You ask again, if when I went out to sell a man I didn't know that I was not selling him "Coca-Cola"; I told him I was selling "Koke," that it was made out of the same formula, but that it was to be sold for "Coca-Cola" and couldn't be told from it. You ask again if, when I went and tried to sell a man these goods, I didn't know I was not selling "Coca-Cola." I didn't know what I was selling; I knew I was selling "Koke." No, I didn't know what I was selling. "XQ. 76. Do you mean to say after the question has been asked you five times, a man of your age and experience and sensibility, you

(Deposition of John Cain.)

didn't know what you were selling people, what you were selling as 'Coca-Cola'?" "A. No, sir; I sold 'Koke,' I didn't know what 'Koke' was, I was told to go out and sell 'Koke.' I went out and sold 'Koke,' I didn't know what 'Koke' was, I knew it was a soft drink and that's all." I was instructed to go out and sell it to anybody that could use it—to anybody in particular. Yes, sir; to tell them it was the same thing as "Coca-Cola" and that they could sell it as "Coca-Cola." Yes, sir; I expected that employment. You ask if I call that an honest or a dishonest employment; I don't know what you call it, I only did as I was told under my boss' instructions. No, sir; I wouldn't be willing to do anything else of that kind for money; I am making an honest living. You ask if I consider that that was honest to go out and sell "Koke" for "Coca-Cola"; I didn't know, I was only obeying my orders. I certainly did take my line of honesty from the man employing me; I went according to his orders and went out and sold it; I didn't know anything about it, I knew it was "K-O-K-E," what it was made of, I didn't know. [538] You say that I knew I was not selling "Coca-Cola"; I knew I was selling "Koke," I am telling you. I went out and told men I could sell them something they could sell as well as "Coca-Cola," I certainly did. There was the affidavit, the best proof in the world that it was made of the same formula. I was depending on the affidavit—I certainly was. Yes, sir; it had a signature to it. It was a printed affidavit. Then I sold it because I

(Deposition of John Cain.)

believed it honest, I certainly did, otherwise I wouldn't have sold it. "XQ. 93. You believed what honest?" "A. That I was going out selling 'Koke' and it was made out of the same formula as 'Coca-Cola.' " Yes, sir, I sold "Koke" As a matter of fact I did not sell any "Koke" to Mr. Rausch or to Mr. Morero or to Mr. Rootmyer, no, sir, and I cannot remember the name of a single soul to whom I sold any, but I can go to the stores that I sold to. I was examined on this question by those two gentlemen whose names I have given and told them I couldn't remember the other names. You say that it boils itself down to this: That I went out and tried to sell something to commit a fraud with, but actually never sold any; I went out according to orders. "XQ. 99. I say, but you went out to sell this fraudulent stuff to be used as 'Coca-Cola,' but never sold any to those three gentlemen?" "A. Yes, sir." You ask why I left the employ of the Koke people; I wouldn't have left it if Mr. Scott hadn't died; I would have been with them yet. No, sir; I didn't quit when he died, I worked with them one week afterwards and Mr. Wright let me go. No, sir; he didn't give me any reason for my leaving, we have got no instructions from Mr. Wright. I only knew Mr. Wright was president of the concern; I haven't seen Mr. Wright until after Mr. Scott died, I never knew who Mr. Wright was until then. Yes, sir; I worked for him a week afterwards and then he let me go. I don't know how long Cheevers stayed there. I can't answer whether he was there under Mr. Wright

(Deposition of John Cain.)

very long, because I don't know, nor do I know why they let me go. "XQ. 108. You hadn't sold much for them, I suppose?" "A. I don't know, may be I hadn't. I can't answer that question, all I can tell you is that Mr. Wright let me go. You say I was not making any sales for them; I couldn't make any the week Mr. Scott was sick. No, sir; after Scott died I actually had nothing to do with selling. Mr. Wright paid me and that was the end of it. You ask if I didn't go to only two places, and if, as a matter of fact I ever went to [539] Rootmyer; yes, sir, we went to the three places, but we didn't find Mr. Rootmyer in, so there was no conversation with him. No, sir; Cheevers didn't do any talking, he didn't say a word. Yes, sir; he kept his mouth closed and I didn't do any talking. I asked a question of Mr. Rausch and Mr. Morero, what arguments I had used when I went in there to sell them "Koke"—I wanted them to tell these gentlemen what arguments I used. No, sir, nobody else talked. No, sir; Cheevers didn't talk nor did Cain nor did Friend. Yes, sir; I alone did the talking. No, sir, I didn't go twice with Mr. Cheevers to any of those places. The only time we went was once. We went once to the same place and went together. No, sir, I couldn't be mistaken as to the testimony I am now giving on that point. To repeat: We four gentlemen went to Rootmyers but he wasn't there. We then went to Rausch and I said, "Mr. Rausch, I want you to tell these gentlemen the arguments I have used in trying to sell you 'Koke' " Thereupon Mr. Rausch told them what

(Deposition of John Cain.)

arguments I had used. Yes, sir; we took a drink while that was going on, and then left and went on to Mr. Morero's and there I repeated the same thing: "I want you to tell these gentlemen what arguments I used to you in trying to sell 'Koke'" Yes, sir; that's all that occurred. Thereupon Morero told them, yes, sir, and told them substantially what I am telling you was the argument, yes, sir. No, sir; nobody else did any talking. No, sir; Cheevers did not talk, no, sir, none of the others did any talking. Yes, sir; each of us took a drink. I had a glass of beer, Cheevers had a soft drink, Mr. Gillon took a glass of beer and Mr. Friend drank a soft drink, also. I don't know whether he had any "Coca-Cola" in there at the time, but I know it was a soft drink. anyway. No, sir; I don't remember what day that visit was paid. Yes, sir; it was last month. You ask if it was not the month before last; I don't remember the exact date. Yes, sir; we four gentlemen made that visit to this place by previous engagement between ourselves. Yes, sir; that was on the same day that I saw these two detectives of the Coca-Cola Co. No, sir, I didn't know they were detectives. Yes, sir; they told me that they were connected with the Coca-Cola Company hunting up evidence—they asked me to make a statement. Yes, sir, after we got together they told me that they were representing the Coca-Cola Company in this lawsuit and that they were investigating how the Koke Company did business. [540] I knew they were investigators of the Coca-Cola Co. No, sir, they didn't tell me they

(Deposition of John Cain.)

were lawyers. I didn't know whether they were lawyers or not. You say that I assumed that they were not; well, I felt that way about it, anyway. Yes, sir; it was pretty evident they were not lawyers, and the idea was to get me, in the dealer's presence, to tell them. You say that that idea corroborated what I and Cheevers told them we did do; I don't know what Cheevers told them I did, but I know what I told them. Yes, sir, it corroborated what I told them. I got those instructions when I went into the employ of the Koke Company, from Mr. Scott. You say that Mr. Scott is now dead, of course, and ask who was present when Scott and I had the conversation; there was no one present at any time when he and I had the conversation. You ask if I formed any opinion of him during the time I worked for him; no, sir, I haven't formed any opinion of anybody. Yes, sir, I certainly do think he was an honest man, and a nice man, and a high-class man in every way, I certainly do and because I believed he was an honest man and a high-class man, I believed in him and did exactly as he told me, and for that reason did what he told me, and when he told me to go out and do a thing I went and did it. You ask how I reconcile my impressions of an honest man and a gentleman with this statement I have given you; I see no fault in it; I done his orders, I thought whatever he said was right. When he gave me orders, I went out and obeyed those orders as an employee under him. No, sir; I didn't think it was wrong on his part to try to

(Deposition of John Cain.)

put over that job. When he furnished that affidavit I thought he was right. Yes, sir, I still think he was right, when he furnished me that affidavit. I have always thought he was all right. Yes, sir; I thought we had a right to sell this stuff. He showed me this affidavit where it was the same as "Coca-Cola." No, sir; I was not running a saloon when I was employed by them; I was out of business. "XQ. 185. Did I misunderstand you—or can you tell me if I am right; Mr. Scott told you to sell it as 'Koke.' " "A. Yes, sir." "XQ. 186. Not as 'Coca-Cola'?" "A. No, sir. Mr. Scott told me that I could go out and sell it the same as 'Coca-Cola' and notify the trade there was no difference in it, and that"— "XQ. 187. Well, he didn't tell you to sell it as 'Coca-Cola'?" "A. No, sir, he didn't tell me to sell it as 'Coca-Cola.' " "XQ. 188. Told you to sell it as 'Koke'?" "A. Told me to sell it as 'Koke,' yes, sir." [541] Yes, sir; he used the word "dope" to me at times.

Deposition of C. H. Whittle, for Plaintiff.

C. H. WHITTLE.

Direct Examination by Mr. HIRSCH.

I reside at Gainne and Magazine Streets in New Orleans. I am 42 years of age. I was never exactly employed by the Southern Koke Company, but I went out soliciting orders for Mr. Scott. I received instructions from Mr. Scott as to how to solicit orders. He came to me one day and asked would I go out and help Mr. Cheevers in getting

(Deposition of C. H. Whittle.)

customers for his "Koke," when they had the bottling department going, and I went out with Mr. Cheevers and got from thirty to forty one day, and the next day I got quite a number of customers for him, I don't know exactly. Well, I used a great many arguments to the trade in selling "Koke," one I used was that the Coca-Cola people had put up money for prohibition—a million dollars, so I was told by Mr. Scott—and several other things. He told me that the Koke people was the originators of "Coca-Cola" and a man by the name of Pemberton, he died and they beat his wife out of it in the courts that's what Mr. Scott told me. You ask what arguments I used to the trade to sell it; well, when I sold "Koke" I told them it was "Coca-Cola"—just the same, not a bit different, they couldn't tell it by taking a bottle of each and drinking it.

Cross-examination by Mr. DART.

I sold it as "Coca-Cola," not as "Koke," no sir,—not all the time, at times when people asked me for "Coca-Cola" I told them to take "Koke," if they asked me was it "Coca-Cola," I told them yes. You ask who I told that to; I told everybody that came in to buy it, a fellow in the saloon, Bob Kitchens, in the Civil District Court—he was a saloon man, I wasn't selling it to him, I was selling it to the customers—the people that came in there buying in the saloon. I was bartender in that saloon at that time. No, sir, I did not sell it to my customers as "Coca-Cola." I sold it as "Koke" and as "Coca-Cola" and sold it when people came in and asked for "Coca-

(Deposition of C. H. Whittle.)

Cola" I would give them "Koke." Yes, sir; I did that when I was bartender. When I sold it to the trade I sold it as "Koke." No, when Scott sent me out he didn't exactly tell me to sell it as "Coca-Cola" but he told me to say anything so I sold it. As long as I sold it he didn't care. [542] He put it in pretty near that exact language. He told me he didn't care how I sold it, so I sold it. You ask won't I swear one way or the other—did Mr. Scott tell me to sell that stuff as "Coca-Cola"; he told me to sell it any way I felt like selling it, as long as I sold it. You again ask me if Mr. Scott told me to sell that stuff as "Coca-Cola"; he told me to sell it any way I could sell it—it didn't make no difference to him how I sold it, so I sold it. You ask me for the third time if Mr. Scott told me to sell that stuff as "Coca-Cola"; he didn't make any exact assertion on it at times, at certain times he did. He told me plump and plain to say it was "Coca-Cola" if I could sell it that way. Yes, as "Koke" and as "Coca-Cola," if I could sell it that way. You again ask me if I am certain that Mr. Scott told me to sell "Koke" to the dealers as "Coca-Cola"; I answer, yes. Well, I don't know for sure now whether anybody was present when he told me that or not. You ask how I came to be a witness here and who brought me here; I came through Mr. Cheevers. He knew I was with him and asked would I come up and give my testimony as to the way we sold "Koke" and I told him, yes. He didn't exactly bring me here to-day, but I made an appoint-

(Deposition of C. H. Whittle.)

ment with him to come. No, sir, he didn't introduce me to any other gentlemen. No, sir, I didn't give a statement to anybody. No, sir, I haven't talked to anybody before getting on the stand. Yes, sir; I stick to that. No, I haven't talked to anybody about what I was going to testify about here. You ask what I did talk about; well, I talked about different things—Cheevers asked would I come and give my testimony and he took me before this gentleman and asked would I come and give my testimony in regards to the way I sold "Koke," and I told him, yes. No, sir; I didn't tell that gentleman what I have been telling here. I am pointing to Mr. Hirsch. I was in his office, Mr. Cheevers took me up there yesterday afternoon to ask would I be a witness. I don't know whether it's his office, it's his room, I guess, in the Grunewald Hotel. Cheevers took me up there yesterday evening. No, sir, Mr. Hirsch and I didn't talk about anything. He just asked did I work for the Koke Company, and I told him, no, I was soliciting "Koke" for the Koke people, but I never worked for them. In fact I got paid by Mr. Scott for what I done. Yes, sir; that's all I told Mr. Hirsch; I told him absolutely nothing else. [543] Yes, sir, I stayed with him some little time and we talked about different subjects and had a glass of beer. Yes, sir; we talked about the weather. No, I don't think we hit the war in Europe much. Yes, sir; all I told him was what I told you here, now: That I once sold "Koke" for the Koke Co. I told him I sold "Koke" and

(Deposition of C. H. Whittle.)

that is every word I told him. With that exception, I have talked to nobody else. Well, I talked to one or two other gentlemen in there, but I don't know their names. No, I don't think it was any of these gentlemen sitting around here now. Mr. Cheevers and I was together, I don't think it was anybody else. I am doing nothing right at the present time; I am out of a job. I don't know whether I am getting paid for the time lost up here or not. I never had any understanding with anybody about it. No, sir, they did not say they would pay my expenses. I don't know of anybody else that Cheevers brought down to see these gentlemen. I know nothing about Cheevers' transactions, only what he did with me—he just asked would I come down and give my testimony, and I told him, yes. As far as I know, I am the only witness he brought. Yes, sir, I know Cain, but he wasn't there—I seen him around the “Koke” place once or twice. I never was in the Koke Company's employ, only through Mr. Scott and then only for just one or two days. Yes, sir, Scott paid me for what I did—gave me \$10.00 one time and \$25.00 another. No, I don't know what day that was—about May, I believe, a year ago. Yes, I remember the name of some of the people I sold “Koke” to. I sold it to Kelly and Winn—he is dead now, but Winn keeps the place. I sold it to Winn. I also sold it to Morton in the alley. You ask if I sold it to those people as “Coca-Cola”; I told them anything so they would buy it. You ask what I told Winn; I told them it was “Koke,” but just as good

(Deposition of C. H. Whittle.)

as "Coca-Cola." I told Morton the same thing, told everybody the same thing wherever I sold it—that it was "Koke," but just as good as "Coca-Cola," yes, sir, exactly.

Deposition of William J. Speyer, for Plaintiff.

WILLIAM J. SPEYER.

Direct Examination by Mr. ROGERS.

I am vice-president and superintendent of the Houser Printing Company, at 624 Poydras St., New Orleans. Yes, sir I recollect an interview I had in 1913 with Mr. Scott and a Mr. Cheevers representing the Southern Koke Company of New Orleans. [544] Mr. Scott came in and asked about having some cuts made or having some labels made, and I didn't have the cuts present here, and, about two days afterwards, they brought the cuts in with Mr. Cheevers and they wanted the colors of pink, something similar to the colors used on "Coca-Cola" bottles; well, I didn't know what that was and Mr. Cheevers went out and brought a bottle for me to see the color of the ink. I used a color of ink as near as possible to that—a kind of blue black. Yes, sir; Mr. Cheevers went out and got a bottle from the saloon and brought it back. We printed one hundred thousand labels from the cut I have spoken of, and delivered them as you have it there on these receipts. Plaintiff's Exhibit #106 is an impression of the plate that was delivered to me by Mr. Scott, but it's a rough proof that was taken when we went to deliver the proof to them, after Mr.

(Deposition of William J. Speyer.)

Scott was dead. Plaintiff's Exhibits #107, 108, 109 are receipts. Whenever we send out any packages we always get receipts and keep records of them in the office, in case a dispute comes up we can always locate them. Yes, sir; these slips represent the delivery of the labels that we made for the Southern Koke Company, about which I have testified. The envelope marked Plaintiff's Exhibit #110 is a record of the job. As soon as a job enters, it is entered on this ticket, goes to the composing room, and then to the press-room; this is the record of it. That is the envelope enclosing the proof and slips I have testified about. I have had these proofs and slips and the envelope in my possession since March 27, 1913. Just as I came in the door I met you and gave them to you. "X. 20. Did you make a label for the Southern Koke Company imitating the color of the 'Coca-Cola' label?" "A. Yes, sir." "X. 21. And you got that color from a specimen which Mr. Cheevers went out and got?" "A. Yes, sir." "X 22. He got a bottle of 'Coca-Cola' with that label on it?" "A. Yes, sir."

(Plaintiff's Exhibits 104, 106, 107, 108, 109, 110 were here tendered and offered in evidence by plaintiff.)

(There was no cross-examination of this witness.)

Deposition of A. B. Freeman, for Plaintiff.

A. B. FREEMAN.

Direct Examination by Mr. HIRSCH.

I live in New Orleans and am Secretary and Treasurer of the [545] Louisiana Coca-Cola Bot-

(Deposition of A. B. Freeman.)

tling Company. I represent the Coca-Cola Company as their authorized bottlers. No, sir, I do not represent the manufacturers of the syrup. I represent the Bottling Company. Mr. J. L. Murphy is the local representative here of the manufacturers of the syrup. Yes, sir, we bottle "Coca-Cola." Yes, sir, Plaintiff's Exhibit #111 is a label used by us and the bottle used by us, in the bottling of "Coca-Cola."

(Plaintiff here tendered and offered in evidence Plaintiff's Exhibit #111.)

Plaintiff's Exhibit #112 is a "Koke" dispensing bottle used for dispensing their "Koke" syrup.

(Plaintiff here tendered and offered in evidence Plaintiff's Exhibit #112.)

I have seen several of these containers in use in several of the saloons around New Orleans, similar to this one. Yes, sir; I had a conversation in regard to the paint used on "Coca-Cola" barrels with Mr. Palmer. He came to my office—I had known him for sometime—and asked me if I could find out, or would find out, for him the exact kind of paint used by the Coca-Cola Company for painting its barrels. I told him I would gladly do so, and he volunteered the information that he wanted to get it for a new concern just starting up in town and putting out a syrup—the Koke Company—who wanted to paint their barrels identically the same color, and would use that paint if he could get it. I told him I would get the information for him, but that I was afraid he couldn't use it, and I showed

(Deposition of A. B. Freeman.)

him one of the printed decisions in the "Gay-Ola" case that I happened to have in my desk. He thanked me for the information and said he would go on away.

Cross-examination by Mr. DART.

Mr. Hirsch asked me, as I understood the question, if Plaintiff's Exhibit #111 was the "Coca-Cola" label and if it was a "Coca-Cola" bottle. I replied that it was, in both instances, as used by us. This particular bottle is the property of the Louisiana Coca-Cola Bottling Company, so far as the actual glass is concerned; the trademark, of course, is the property of the Coca-Cola Co. The Coca-Cola Bottling Company is a different corporation, of which I am the Secretary and Treasurer, and [546] it owns the bottles and does the bottling. We perfect the manufacture here, that is we make out of the syrup the contents of that bottle—and bottle it and sell it. We get the labels from the Coca-Cola Co. Except the syrup, that's all they furnish. We buy the crowns direct from the concern who is licensed to sell them to us by the Coca-Cola Company, the Bottling Company, and not the property of the Coca-Cola Company—that is, the Syrup Company. I am the same Mr. Freeman, who testified before the United States District Court in Louisiana in the trial of the case of the Coca-Cola Co. against Glee-Nol Bottling Co. You ask if the bottle marked Plaintiff's Exhibit #111 has been used by the bottlers for other purposes than "Coca-Cola"; as I testified in the Glee-Nol case, Mr. Dart, the standard "Coca-

(Deposition of A. B. Freeman.)

Cola'' bottle is adapted for us only in bottling "Coca-Cola" and has been used for no other purpose except, as I believe I expressed it, human flesh is weak and there might have been a few errors out of thousands of bottles, just the same as might happen in counterfeit money, by a paying teller. No, sir, it is not a fact that "Grapine" has been put out by us in bottles having "Coca-Cola" blown in the side thereof, not to my knowledge. Up to the time of the 1911 convention that bottle had not been adopted. You ask if I didn't testify in the Glee-Nol case that a bottle of that general shape and make had been generally used for various drinks, and that I myself had bottled "Grapine" in such a bottle and you say that you showed me a bottle, if I will recollect; I couldn't have testified that positively, Mr. Dart, because that particular bottle, was a result of this conference between the bottlers and the Coca-Cola Company that you refer to—that bottle was not in existence before hand. Yes, sir, it is true that a bottle bearing the label "Coca-Cola" has been generally used by our Bottling Company anterior to the convention bottlers which I speak of in 1911, for bottling other drinks than "Coca-Cola," but not that particular bottle, because that particular form and shaped bottle was adopted by that convention—not "Grapine" however, because we didn't bottle "Grapine" prior to that time, it wasn't on the market. You say you showed be a bottle of "Grapine" during the Glee-Nol trial bottled in a bottle exactly like this and

(Deposition of A. B. Freeman.)

ask [547] me if I don't remember it; I don't recollect that particular bottle; I don't say that you didn't, there were quite a number of bottles shown me for identification. "XQ. 28. I ask you, 'Is it not true that you yourself bottled "Grapine" and sarsaparilla in your "Coca-Cola" bottles?' You answered, 'We haven't bottled any other things in them for the last two and a half to three years'; that's the correct answer, wasn't it?" "A. Yes, sir, and I reiterate that." And that meant that I had bottled other things anterior to the last two and a half to three years, and the qualification as to "Grapine" that I now make is that we put sarsaparilla in such bottles and not "Grapine," because it was not then on the market. My recollection is that "Grapine" was first on the market the beginning of last year,—possibly last fall. That is not a "Coca-Cola" product. It is put up by the William A. Abbott Co., of Los Angeles. It is about the same shade of color as sarsaparilla and "Coca-Cola," but it is colored with coal tar color, whereas "Coca-Cola," is colored with caramel, but it has about the same general appearance and color. Anterior to this convention of bottlers that I speak of, the "Coca-Cola" bottle had the trademark blown in all over the bottle in various positions; that is, there was no particular place where they blew in the name "Coca-Cola." The trademark itself was uniform, but it was not uniformly blown in the same place on every bottle. It was not I who testified that even at this time there is a percentage of "Coca-Cola" bottles

(Deposition of A. B. Freeman.)

that are made with the trademark blown on the shoulder. It was Mr. Graham who testified to that. I couldn't say whether that is a fact or not, because I don't make the bottles, and we personally don't buy any except that particular kind of bottles,—I mean my own company here in New Orleans. No, I don't know that the bottles are not uniform; there is no new bottles being introduced to the trade except the standard bottles. I understand that there is some of the older bottles that turn up from time to time, and probably a small percentage of them are still being filled with "Coca-Cola." We come only in contract with our own immediate territory and we don't see any other bottles being used in the trade. Yes, sir, you exhibited a number of bottles to me and I recognized them as various types of "Coca-Cola" bottles that [548] were used prior to the adoption of the standard bottle.

Redirect Examination by Mr. ROGERS.

By "label on that bottle" I meant and referred to the paper label thereon; namely, Plaintiff's Exhibit #111.

Deposition of George S. Morse, for Plaintiff.

GEORGE S. MORSE.

Direct Examination by Mr. ROGERS.

I am the buyer for the Economy Drug Store, 1019 Canal St., New Orleans, which concern operates a soda-fountain. I have been connected with concerns which operate soda-fountains for about fifteen years; namely, at Johnson's Pharmacy on Gerard

(Deposition of George S. Morse.)

and St. Charles Sts., and at the Economy. Yes, sir; I am and have been about the fountains in such a way that I can hear people when they come in and ask for drinks and hear the language they use in making known their wants. Yes, sir; we handle and dispense "Coca-Cola" and have been doing so ever since the fount was opened. The Coca-Cola Company of Atlanta, Ga., makes "Coca-Cola." You ask if people, when they mean "Coca-Cola," invariably use the name "Coca-Cola" or if they have other expressions; oh, sometimes they use other expressions. They usually ask for a "dope" or "koke." When a person comes into our fountain and asks for a "koke" or a "dope" we understand that he means "Coca-Cola," and we furnish "Coca-Cola," in response to such requests. (Mr. LITTLETON.—We wish to repeat here the same general objection to this character of testimony as to the nicknames that we have made all along through the depositions.) We have never had a purchaser to reject it on the ground that it was not what was asked for.

Cross-examination by Mr. DART.

You ask what do I understand by the word "dope"; I understand by that that it must stimulate them some, that's the reason they ask for it in that way. A man who uses dope is a man who seeks a stimulant. Usually it is applied to morphine or cocaine—any opiates. It was once the general impression that "Coca-Cola" had some stimulating drug in it, and I always thought it myself until I

(Deposition of George S. Morse.)

read the report of the Government that it didn't contain it. [549] I think it was in the past six months, if I remember right, that I read it. Yes, sir; it is the general impression of our customers that it does contain a stimulant of the kind that has been suggested—cocaine, or morphine or something like that. Yes, sir; I have met men and women who are known as “dope fiends” or “hop fiends.” You ask if I have detected that the “hop fiend” or “dope fiend” as a rule follows up his dope with a soft drink or stimulating drink; I haven't met them in my line, I have noticed that in drinking, that's all,—I haven't noticed that kind of thing at all. If they can't get the cocaine or morphine they usually get whiskey or take something which contains cocaine. No, sir, I have handled none of the other sort of drinks. When I say “Coca-Cola” is a product manufactured by the Coca-Cola Company, of Atlanta, I get that from the labels on the packages. We don't buy it direct from them, we buy it through the wholesalers in town. The label states it is manufactured by the Coca-Cola Company, of Atlanta, Ga., and that is how I derive my knowledge. Of course, I don't know what the other soft drinks are, or what names the habitues call for them under.

Deposition of Clarence J. Hogan, for Plaintiff.

CLARENCE J. HOGAN.

Direct Examination by Mr. HIRSCH.

I am a detective employed by the Pinkerton National Detective Agency, and have been a detective for something over two years. I have seen Plaintiff's Exhibit #113 before, and the label thereon has my initial on it on the corner there (indicating). I wrote the label and put my initials on it. I purchased this bottle from Tranchina's cafe. Just a minute on this Exhibit #113 here, this bottle was labeled by B. J. Gillon in my presence and designed that. The same applies to Plaintiff's Exhibit #114, which was also purchased at Tranchina's cafe by Gillon in my presence. Plaintiff's Exhibit #115 was purchased by Gillon in my presence. Plaintiff's Exhibit #116 was purchased at Bob Kitchens, 1200 Carondelet St. Plaintiff's Exhibit #117 was purchased at Wendt's saloon, 1000 Baronne St., April 26, 1913. Plaintiff's Exhibit #118 was purchased by Gillon in my presence, April 14, 1913. Plaintiff's Exhibit #119 was purchased at Tranchina's cafe on April 27, 1913. Plaintiff's Exhibit #120 was bought at Bob Kitcher's saloon, 1200 Carondelet [550] St., on April 27, 1913. Plaintiff's Exhibit #121 was bought at Shepherd's saloon, 437 St. Charles St., on April 26, 1913. Plaintiff's Exhibit #122 was purchased at Wendt's saloon, 1000 Baronne St., April 23, 1913. I have examined each of these products and my initials and marks are up in

(Deposition of Clarence J. Hogan.)

the corner of the labels attached thereto by which means I identified these bottles. I did not make out any of the labels on any of these bottles but I saw them made out. The same day that we purchased. In the case of each purchase, either Gillon or I asked distinctly for "Coca-Cola" and in each instance one of these exhibits was handed out to us by the bartender, without any explanation whatever. In cases where an explanation was made, we refused to take the article.

Cross-examination by Mr. DART.

There were places where we asked for "Coca-Cola" and they didn't have it, but told us they had nothing but "Koke." In such instances as that we didn't take anything, but walked out of the man's place. I haven't the slightest idea how many places of that kind we went into, unless I would refer to my notes. You say that judging by these *peoples*, we visited only three or four places; well, no, sir; we didn't we visited a number of places, but the exact number I will not be able to state. These purchases here are the only ones as to which we got results. I couldn't say how long we were working. I couldn't say whether or not we were working a week unless I was positive. I have no way of recollecting it only by referring to my reports that were written on the night or the afternoon of the purchase of these bottles. But, we did go to a great many places where they told us they had no "Coca-Cola" and offered us "Koke." I have no memory of how many days we worked at this. We have produced

(Deposition of Clarence J. Hogan.)

all the "Koke" that was offered us for "Coca-Cola." You say you take it for granted that we were not deceived when we got it; why, sure not. We were out hunting for it and when we got it we simply picked it up and took it out. Sure we knew what it was when we got it, but they didn't think we did. They thought we were soft and easy. Yes, sir; we asked for "Coca-Cola" all the time—nothing but "Coca-Cola." We distinctly asked for "Coca-Cola." If I would go into a place and ask for a bottle of "Coca-Cola" I would do that distinctly and in case they didn't have the "Coca-Cola," such as [551] these, why they would shove us out this "Koke."

Redirect Examination by Mr. HIRSCH.

After referring to my notes I am able to reply that I went to twenty different places altogether. You ask how many of those places told us they didn't have "Cola-Cola" but had "Koke"; that's the number here that gave me "Koke" for "Coca-Cola." None of them said "we haven't got 'Coca-Cola' but we can serve you 'Koke'"; there is three told us they had "Koke." No other substitutes with the exception of "Koke" were offered us, except whenever we would ask a man for "Coca-Cola" and he didn't have it he would say he could furnish us with cream soda or sarsaparilla—that happened on three occasions. And on three occasions he said he could furnish us with "Koke", and on ten occasions they offered us genuine "Coca-Cola."

(Plaintiff here tendered and offered in evidence Plaintiff's Exhibits Numbers 113 to 122, inclusive.)

Deposition of Frank J. Bogner, for Plaintiff.**FRANK J. BOGNER.**

Direct Examination by Mr. HIRSCH.

At the present time I am not with the Pinkerton National Detective Agency, but I was with them on or about May 7, 1913. I didn't write the label on the bottle marked Plaintiff's Exhibit #123, but I signed it. That bottle was purchased at George Springer's. I went with Mr. Condon and we asked for "Coca-Cola" and they gave us "Koke." We asked him to sell us a bottle of "Coca-Cola" and he sold us this. It was given us without any explanation whatever. Plaintiff's Exhibit #124 was purchased in the same manner and under the same circumstances from Bauman's saloon. Plaintiff's Exhibit #125 was purchased in the same way at Gimilli Bros. Company, Drey Street, on May 3, 1913. Plaintiff's Exhibit #127 was purchased at J. Bauman's saloon, 620 Conti St., May 8, 1913, under the same conditions as outlined above. Plaintiff's Exhibit #128 was bought at J. Bauman's saloon, 620 Conti Street, May 7, 1913. Plaintiff's Exhibit #129 was bought at Martin's Cafe, corner of Exchange Alley and Iberville Street. Plaintiff's Exhibit #130 was bought in Martin's cafe at the above address on May 8, 1913. Plaintiff's Exhibit [552] #140 was bought at Curber's 409 St. Charles Street, April 30, 1913. Plaintiff's Exhibit #141 was bought at Curran's saloon, Chippewa and St. Thomas Streets, July 11, 1913. Plaintiff's Exhibit

(Deposition of Frank J. Bogner.)

#142 was bought at George Springer's place, 128 Royal Street, May 8, 1913. Plaintiff's Exhibit #143 was bought at George Springer's, Royal Street, on May 6, 1913. Plaintiff's Exhibit #144 was bought at Martin's cafe, Exchange Alley and Iberville Street, May 6th. Plaintiff's Exhibit #145 was bought at Curren's saloon, St. Thomas Street, July 9, 1913. Plaintiff's Exhibit #146 was purchased at Gimelli Bros. Company, King and Drive Streets, May 1, 1913. Plaintiff's Exhibit #147 was bought at J. M. Lotz's saloon, 1300 Magazine Street, on May 1st. Plaintiff's Exhibit #148 was also purchased at J. M. Lotz's saloon, 1300 Magazine Street on April 30, 1913. Plaintiff's Exhibit #149 was also bought at Lotz's saloon on May 5th. Plaintiff's Exhibit #150 was bought at Curren's saloon, Chipewa and St. Thomas Street, July 10, 1913. Each of these exhibits was purchased in the same manner and under the same circumstances, namely; Mr. Condon and myself went into a bar-room, called for a glass of "Coca-Cola," and they took out a bottle of "Koke," poured it in a glass, and we drank a part of it; then we asked them to sell us a bottle to take with us,—a bottle of "Coca-Cola,"—and they wrapped up a bottle of "Koke." No explanations whatever were made. That's all that happened.

Cross-examination by Mr. DART.

No, sir; it didn't hurt us to drink all that stuff. I couldn't tell exactly how many places we did go to. We would go different days, some days went as high

(Deposition of Frank J. Bogner.)

as twenty and some days only ten. We kept it up, I suppose, two or three weeks. Yes, sir; that's all we got. In many instances they said they didn't have it, and, of course, we would go out. Some places told us they had "Koke" and [553] didn't have "Coca-Cola," a great many places told us that, and of course, when they offered us "Koke" why then we didn't buy it. Sometimes we might take a cigar to keep from walking out without buying anything. Yes, sir; we have produced all the "Koke" we got in our search. We were employed to get that stuff if we could; we went out to see if they would sell us "Koke" for "Coca-Cola," and, when we got it, we wrapped it up and put the name of the party we got it from on it. We went to see if we would get a substitute for "Coca-Cola" or not, and when we got it we got what we were searching for, got the evidence against him. Of course, when those fellows gave us a bottle wrapped up we knew we had them. If they were willing to sell something instead of "Coca-Cola" as a substitue, of course, we had them, we had the evidence, and took it to the office.

(Plaintiff here tendered and offered in evidence Plaintiff's Exhibits Nos. 123 to 150, inclusive.)

Deposition of C. G. Peters, for Plaintiff.

C. G. PETERS.

Direct Examination by Mr. ROGERS.

I am a druggist located at Barrone and Poydras Streets, in the city of New Orleans and have been a druggist for twenty-eight years. Yes, sir; I operate

(Deposition of C. G. Peters.)

a soda-fountain at my drug store and have done so for twenty-eight years. I do a fairly good business. I handle "Coca-Cola" and have done so for about 18 or 20 years. I presume the Coca-Cola Company, of Atlanta, makes "Coca-Cola." Yes, sir; it is a product extensively advertised. Yes, sir; occasionally I am about the fount myself so that I can hear people when they ask for drinks that they want, and that has been true all the time I have been in business. When people want "Coca-Cola" most of them ask for "Coca-Cola." Some ask for "koke" and some for "dope." When a person comes into my store and asks for "dope" or "koke" I understand that he means "Coca-Cola" and in response to such requests we supply "Coca-Cola." No, sir; I have never had "Coca-Cola" rejected when people asked for a "koke" or a "dope" as not being the product asked for. You ask how long I have known the names "dope" and "koke" to be used as nicknames for "Coca-Cola"; lately,—I can't tell exactly, might be seven or eight years, might be longer.
[554]

Cross-examination by Mr. DART.

Oh, yes, sir; the majority of my people in calling for "Coca-Cola" use the trade name, and it is only during the last six or seven years that I have heard people speak of it as "koke" and "dope." Yes, sir, I am a druggist and the word "dope" to a druggist has a meaning to it—not exactly soda drink, though. It means morphine, cocaine, something like that—anything of which the drug forms a part.

(Deposition of C. G. Peters.)

You say you suppose it's true with me, as was the general impression up to a very recent time, that "Coca-Cola" had something of that kind in it; well, as a druggist I think it did have something in it and that was pretty generally known, too, and I suppose it was known to my customers. Yes, sir; I have handled a lot of these drinks like root beer and sarsaparilla. The coloring matter in root beer is burnt sugar, what we call caramel. The color of sarsaparilla, root beer and "Coca-Cola" is very much alike. There is no distinction to the ordinary eye. I have been handling sarsaparilla and root beer for 28 years. I was handling it before I ever handled "Coca-Colo"—before I ever heard of "Coca-Cola." Yes, sir, I remember the thing that used to be called "Wine of Coca"; that's an official preparation, standard—in the Pharmacopeia. I have known "Wine of Coca" ever since I have been in business. You ask if I remember who used to put it up; why I make it, everybody makes it. It's just open to the whole world. It's color is dark like "Coca-Cola," Sarsaparilla and root beer. I haven't made it for a number of years, it has died out, no use for it. These other things have taken its place. It used to be made out of coca leaves and Sherry wine. In those old days we gentlemen of the trade used to buy the coca leaves and the Sherry wine and make it ourselves, or we made it out of the fluid extract of coca. You ask if that's the same coca leaf that I have seen advertised on the "Coca-Cola" literature; I don't know about that. Yes, sir; there is only one coca

(Deposition of C. G. Peters.)

leaf. Yes, sir, the coca leaf has in it the elements of cocaine. When I sold wine of coca there was cocaine in it, yes, sir. The fluid extract of coca was a commercial article generally sold at the time I am speaking about, and the "Wine of Coca" was sold extensively, also, but "Wine of Coca" has not been used for the last eight or nine years. [555] However, it was the predecessor of these things and had the same general look and taste. There was no secret in the trade, those who used "Wine of Coca" knew what it was made of, certainly. It was generally understood by the physicians that there was not enough cocaine in it to do any harm. It was simply a stimulant. I have been using "Coca-Cola" exclusively and I don't use any of the other soft drinks. You ask if I know what the others call for; I will tell you, I had so darn many people come around there that I ran them all out; they tried to come and sell a thing as "Coca-Cola" and tell you you can use it as "Coca-Cola" and expect you to substitute and use it as "Coca-Cola." Every one of them does that, all that have been in my store,—there has been "Gay-Ola," and "My-Ola"—I don't know how many different kinds, about a dozen—all rivals of "Coca-Cola" and not a one spent a dollar in advertising, and all trying to work on the advertising the Coca-Cola people are doing. The advertising of the Coca-Cola people is what sells it, they don't come in for "dope" or "koke" or anything else. No, I don't sell their "Koke" or "Dope" and never have. No, sir, of course, I have never seen "Coca-Cola" advertised

(Deposition of C. G. Peters.)

under those names, "Koke" and "Dope." They have always advertised it as "Coca-Cola."

Redirect Examination by Mr. ROGERS.

No, this "Wine of Coca" that I speak of is not a soda-fountain beverage, it's mostly used by physicians in prescriptions. Nobody came in and asked for it, it was all used by physicians—the only other preparation of coca leaves was "Vin-Mariana"—this was a French preparation, and advertised as such, with very glowing testimonials, as I remember, from the Royalty, and all that kind of thing. That has been practically dead for the last eight or nine years. That's a medicine, and that's also true of this "Wine of Coca."

Recross-examination by Mr. LITTLETON.

As a matter of fact the soda-fountain is a comparatively modern institution in drug-stores, and these various drinks have come in following up the general development of the drug-store into a soda-fountain. You ask about what time the soda-fountain became an adjunct to the drug-store and if it was about twelve years ago; well, [556] it was a little longer than that. May was about the first one down here, and for a long time he was alone. No, Cusack had a fountain in his place. May was not the first one; Cusack had it a long time before May.

Deposition of Joseph A. Condon, for Plaintiff.**JOSEPH A. CONDON.**

Direct Examination by Mr. HIRSCH.

I am working for the Pinkerton National Detective Agency and have been with them since April 30, 1913. Plaintiff's Exhibit #125 has my initials on the label. Yes, sir, I remember purchasing that bottle. It was bought at Gimilli Bros. saloon on King and Drive Streets, May 3, 1913—sold to me as genuine "Coca-Cola,"—for which I paid five cents. I asked for a bottle of "Coca-Cola" and they served "Koke" at the bar. No explanation was made. Plaintiff's Exhibits #123 to #550, inclusive, were purchased under similar circumstances which were as follows:—Mr. Bogler and I went into the saloon and asked for a bottle of "Coca-Cola" and we were served a bottle of "Koke" at the bar and after being served with it we asked for a bottle of "Coca-Cola" and were served with that bottle of "Koke." No explanation was made in regard to the purchase except what I have stated. That applies to each one of the Exhibits mentioned above.

Cross-examination by Mr. DART.

You ask me which of us asked the questions, I or Bogner; now, I will have to be my report to tell you who purchased the exact bottle, but it was one or the other of us, we were together in each instance. Yes, sir, we were sent out to hunt for just that sort of thing, with the idea of getting "Koke," and we have produced all we got,—or we state in our report what

(Deposition of Joseph A. Condon.)

we got. If they didn't have "Coca-Cola" but "Koke" we state so in our report. If they offered us "Koke" we refused it—that is, if we asked for "Coca-Cola" and they stated they didn't have it but had "Koke," we refused it.

Redirect Examination by Mr. HIRSCH.

You ask if they handed us anything besides "Koke"; why, I would have to get my report to see. But other things were presented to us, for instance, "Gay-Ola." [557]

Recross-examination by Mr. LITTLETON .

Yes, sir; as "Coca-Cola." No, I didn't produce that, I haven't the report here, I think it is in the report here.

Deposition of B. J. Gillon, for Plaintiff.

B. J. GILLON.

Direct Examination by Mr. HIRSCH.

I am with the Pinkerton National Detective Agency and will have been with them two years in October. Yes, sir, I am a detective. Plaintiff's Exhibit #114 is a bottle of "Koke," which I purchased at Tranchini's saloon, April 27, 1913, accompanied by operative, C. J. Hogan of the Pinkerton National Detective Agency. When we went in there we asked the bartender for a "Coca-Cola" and he served us "Koke." After he served us "Koke" we asked him to wrap up a bottle of "Coca-Cola" to take home and this bottle was wrapped up and is the one which we took home. I wrote the label on that bottle. Nothing else occurred besides what I

(Deposition of B. J. Gillon.)

have repeated here. Plaintiff's Exhibit #113 was purchased from Tranchini's; #122 was purchased at Wendt's saloon, 1000 Baronne Street; No. 120 was purchased at Bob Kitcher's saloon, 1200 Carondelet and so were Nos. 115, and 116; No. 118 was purchased at John Shepherd's saloon, 437 St. Charles St., and so was #121; #117 was purchased at Wendt's saloon, Baronne Street. All these purchases were made under the same conditions and circumstances as I have stated with respect to Exhibit #114. Operative C. J. Hogan was with me when I made all of these purchases of the bottles enumerated and we were together all the time when he asked for these things. We were in the presence of each other and heard each other. We visited twenty places, altogether. There were four places where "Koke" was given us when we asked for "Coca-Cola." Yes, sir; there were four places that served "Koke" to us in response to orders for "Coca-Cola." There were ten places where "Coca-Cola" was given us in response to orders for "Coca-Cola." We didn't buy them; whenever they served "Coca-Cola" we just left the saloon. There were three places which said they didn't have "Coca-Cola" when we called for "Coca-Cola," but which told us they could give us "Koke." At other places they told us they didn't have "Coca-Cola" but could serve soda pop or sarsaparilla. [558] On or about the middle of June of this year (1914) in company with Sam Friend, W. J. Cheevers and John Cain, I visited Rausch's saloon on Court and Rampart Streets, and

(Deposition of B. J. Gillon.)

Marero's saloon, and Montague and Rampart. Cain asked Rausch if he remembered the argument put up to him to take "Koke" in the saloon, telling him he could substitute it for "Coca-Cola" and make an easy sale of it; and Rausch said he remembered the proposition all right, but he wouldn't put the stuff in his saloon because he knew it was a small seller and couldn't get rid of it. The same thing happened at Marero's saloon.

Cross-examination by Mr. DART.

I am 26 years old, I came from New Orleans, was born and raised here. This October will be two years that I have been a detective. In each place we went to, we called first for a glass of "Coca-Cola" and they served us out of the bottle,—they poured it out of the bottle into the glass,—and we drank from the glass. They gave us a drink, which we drank in each instance. When we drank the drink we asked for a bottle of that drink, under some circumstances, and under other circumstances, we didn't ask for it. In each instance I saw the drink which was served to us in the bottle in which it was served, and, in those cases where we got a drink in a glass, I knew what the bottle contained before I drank the stuff, so that I was not deceived at any time by what I drank. In each instance where I ordered a drink and got it in a glass, and followed it up by an order of a bottle, in each such instance I saw it was a bottle of "Koke" that had been served me in the glass before I ordered it; and in each instance where I failed to order a bottle to take away with me, I was

(Deposition of B. J. Gillon.)

satisfied it was "Coca-Cola." Yes, sir; this is the first time I have testified in this case, this is my first service in this case and this is the first time I have worked on a case for the Coca-Cola Co. No, I am hardly able to testify from memory what saloons we went to on these occasions without you called out the saloon—we just rambled, had no particular route, no particular saloons to go to. [559] You say that, but for the labels or subscriptions on these bottles, I wouldn't be able to recall the name of any place we went into; I can't recollect the names of four saloons that sold us "Koke" instead of "Coca-Cola." Yes, sir, I recollect the names of four saloons whose names I have seen on these bottles. I don't believe I could recall the name of any of the other places we went into because we never paid any attention to those; after we were served with "Coca-Cola" we just dropped that. Yes, sir, it is a fact that some of the places told us that they had "Koke." There is one saloon, particularly, which I remember over here on Iverville Street, where the bar-keeper told us that he didn't have "Coca-Cola," but that he had "Koke." No, sir; I can't recollect any other names; there were only three of them that notified us of that fact. You say it wouldn't be hard to remember those; that has been over a year ago, and I have been on a dozen or two operations since then—not for the Coca-Cola people, but for other people. Yes, sir; we went out for the purpose of trying to find people who would substitute "Koke" for "Coca-Cola," that's the truth. That's what we were hunt-

(Deposition of B. J. Gillon.)

ing for. Now coming back to the incident of the Rausch saloon—I said it was on Court and Rampart Streets. In company with W. J. Cheevers, and Mr. Cain and Mr. Friend, we went into the saloon and Mr. Cain asked Mr. Rausch if he remembered the argument that he used to him to get him to take a product called “Koke,” you know; of course, he admitted telling them they could substitute it for “Coca-Cola.” Cain went on and used those words and asked Rausch did he remember the argument and Rausch said yes, he used the argument that he was to sell “Koke” for “Coca-Cola,” but he wouldn’t take any, knowing “Koke” was a poor seller and wouldn’t be satisfactory to his trade. [560] I don’t know whether this Rauch is an American, German or a Frenchman,—I am not a judge of nationalities—apparently he is an American. He is a man, I guess, about in his thirties. He went on and repeated it just as I have told it here. Cain put that argument to Mr. Rausch: I am sure Cain told the man in my presence and in the presence of Cheevers, that he, Cain, had argued to him in the words I have used. Yes, sir, I am sure Cain said that. No, sir, I cannot be mistaken about that. If you told me that it had been testified here that Mr. Cain didn’t say that, but that somebody asked the question of the bar-keeper, whether he remembered what Cain had said, and the bar-keeper then proceeded to repeat what Cain had said, I would say that my statement is right as against Cain’s. I stand by my statement. The bar-keeper never repeated anything,

(Deposition of B. J. Gillon.)

Cain said it. Cain said to the bar-keeper what he had previously said, but the bar-keeper did not repeat that to us. He merely said that he remembered it, and, also, that he wouldn't put "Koke" into his bar because it was known as a poor seller.

Deposition of Pierre Auguste Capdau, for Plaintiff.

PIERRE AUGUSTE CAPDAU.

Direct Examination by Mr. ROGERS.

I am a pharmacist and have three stores, one at the corner of Charters and Canal Streets, one at Rampart and the other at 520 Canal St., all in New Orleans. I have been in the drug business for thirty years. I have soda-fountains at each one of my stores. I have had soda-fountains in the past, and got out of it, but, when I came into the main store about three or four years ago, then I became actively engaged in the soda business again. Before that I had operated soda-fountains off and on, I suppose, maybe for twenty years or more, probably for twenty-two or twenty-three years, possibly longer—for twenty-five years. Yes, sir; I am familiar with the product sold under the name "Coca-Cola" and have handled it off and on within, I should say, all that time—may be twenty or twenty-five years. Yes, sir, the advertising of "Coca-Cola" has always been extensive. The Coca-Cola of Atlanta, Ga., is the maker of "Coca-Cola." Yes, sir, I, myself, am around the soda-fountain in my various stores so that I can hear the names people use in ordering drinks. [561] You ask me to state, when people

(Deposition of Pierre Auguste Capdau.)

order "Coca-Cola" at my fountains, what names they use to indicate that they mean "Coca-Cola," and want that; some will say "give me a 'koke'" and some others will say "give me a 'dope,'" and still others will say "give me some drug"—they all use a humorous expression, or a slang expression, and it always indicates the one thing—and that is "Coca-Cola." (Mr. LITTLETON.—"We renew the same objections we have heretofore made. Note our same general objections to this line of testimony.") In response to the names I have indicated we supply "Coca-Cola." We have never had it rejected on the ground that it was not what was asked for. Yes, sir, I recollect an interview which I had a few months ago with some man, who represented himself as a representative of the Southern Koke Co. I think it may have been sometime in May of this year. Some gentlemen was in the store and he said "you don't handle 'Koke' or 'Dope,' do you?" I said, "Yes, sir, I sell 'Coca-Cola.'" "Oh, that ain't right," he said, "We have got a trademark on the names 'Koke' and 'Dope' and you ought to sell it; every time you are doing that, you are violating the law." "Well," I said, "I don't see how—I have never known of a man who asked for 'dope' or 'koke,' at my fountain but what indicated a desire for 'Coca-Cola'"; and he says, "you will have to discontinue that because if you don't discontinue it, why it might cause you some trouble." I says, "Well, I will tell you, I will look after the trouble; I am convinced when a man comes in here and says

(Deposition of Pierre Auguste Capdau.)

he wants 'koke' or 'dope,' he actually means 'Coca-Cola' and I have never had a man to contradict me on that score, except you, sir." "Well, he says, "we'll get at that, we'll get at that," something to that effect. He left and I have never heard from him since. No, I did not ask this man what he would have understood if a person had asked for "koke" or "dope" if he had been running a drug-store five or six years ago; you see, I wasn't really doing the arguing with this individual; he simply was inviting it, and, naturally, I wasn't going into it, but I did say to him this: That, in all of my experience, I have never had any difficulty in giving a man "koke" or "dope" whenever he would ask for it and I did feel as though that expression had been used for so long a time I couldn't really see where he could have had a trademark or [562] a patent on the words. "Well," he says, "we have got it, and you will hear from it, you may hear from it yet on that subject." I said, "go ahead, old man, these are my views and I stand by them; I feel that every time a man asks for "koke" or "dope" he means "Coca-Cola." "

Cross-examination by Mr. DART.

No, I don't know the man that called on me, and I can't say that I had a personal acquaintance with him; I think he is a man, I suppose, about five feet ten, or nearly six—I guess nearly six feet, dark complexion, dark hair, if I recollect it, a black mustache. He seemed to be a little nervous about it, he didn't himself stay very long, he seemingly delivered his

(Deposition of Pierre Auguste Capdau.)

message and then went off. He didn't give his name. I can't recollect ever having seen him before; I may have seen him, but I couldn't recollect it, and, of course, I haven't seen him since. If I remember right, this occurred in May of this year; I think it was May; I had no special reason, you know, for making a record of that fact. You ask me to repeat what this man's opening words were; well, at first he was in a rather cheerful way and said to me, if I recollect it well, "You don't handle," or "do you handle," or "you don't handle 'Dope' and 'Koke,' do you?" Or "You have never handled it," something to that effect. Those were his first words to me. I think he had just made a purchase, and after making this purchase, and speaking to some one in the store, in a rather cheerful tone, he began in that way, but afterwards he seemed to become angered at the fact that I did tell him that when a man asked for "koke" or "dope" he, in my opinion, meant "Coca-Cola" and that I had never seen anybody reject "Coca-Cola" when they asked for "koke" or "dope." Yes, sir, he did say that he had some connection with this Company,—that is, with the Company that manufactured these goods, either "Koke" or "Dope," and he said "why we have a trademark, we have those words, trademarked or patented," or whatever his expression may have been at that time, which lead me to understand that, from his point of view, he could give me trouble if he chose to, and get after me. He didn't say what Company it was, just simply said "we have," and I assumed from

(Deposition of Pierre Auguste Capdau.)

that it was something he had to do with. He spoke with some authority, too, he was a little angered and spoke rather forcibly for a time. He used the word [563] “we,” but didn’t disclose his identity, I don’t recall his disclosure. I can’t recollect his giving me the name of his concern. Oh, yes, sir, I have been handling “Coca-Cola” for many years. I bought it through their agents here in New Orleans. I know that it is manufactured by an Atlanta concern because the labels on the packages indicate that. Every fence in the city, I suppose every nook and corner of the country it is possible to cover with an advertisement, is covered with the words “Coca-Cola.” I believe I have seen “Coca-Cola advertisements in New Orleans, lately. It has got to be such a thing with me that if I don’t see a “Coca-Cola” sign somewhere I think there is something wrong—I want to say that I just came from the mountains and right on Pike’s Peak, I saw the “Coca-Cola” sign there, right on top. In New Orleans, particularly, you can see them around town, but I haven’t paid any special attention to it recently. That is what I mean by advertising. Then in the press, I see it in the press, I don’t know but what it may be running now in the papers, pick up most any journal or magazine and you will find “Coca-Cola” in it. You ask if my mind is attracted to any other soft drinks of that nature to know whether they are advertised or not; well, occasionally I see an advertisement—“Afri-Cola,” and some other cola drinks, but not in the same way. These advertisements that

(Deposition of Pierre Auguste Capdau.)

I usually see don't impress me as being serious advertising, but simply sporadic—break out occasionally. No, I am not interested specially in "Coca-Cola." You say that when you are used to seeing a certain thing it shuts out your vision of things which you are not interested in; I shouldn't say that as applied to myself; I am equally interested in seeing what is going on in a general way in the business. If there was a demand for other goods of like character, as we have always done, we put it in stock and see what the merits of the article is. You ask if I have ever handled these other soft drinks in opposition to "Coca-Cola"; well, I tell you I was waited upon to sell drinks "Koke" and "Dope," but I couldn't see my way clear to do it. I guess that was about a year or perhaps two years ago. I think perhaps our poor friend who was killed, I believe he was president of the company, I think, at that time, and some one else, came to see me and I was [564] very plain about it, I told them exactly how I felt. Yes, sir, I knew there was a concern pushing "Dope" and "Koke," I did hear of it, for they had offered "Koke" and "Dope" to me, and I didn't like the line of argument that was advanced at that time, and for that reason, I didn't take it. Yes, sir, it's possible that people who are pushing a new line have a harder time to get in.

Deposition of O. P. Bland, for Plaintiff.

O. P. BLAND.

Direct Examination by Mr. HIRSCH.

I reside at 641 St. Charles St., New Orleans. I have a restaurant and confectionery, soda-water and icecream business. I have been in that business since the first of November. Before that I was train-dispatcher for the Texas and Pacific Railroad for about four years and before that I was in the general merchandise business at Wilson, La. Yes, sir, I now run a soda-fountain in connection with my business. Most everything you want in the matter of soft drinks is sold from my fountain, except I don't handle "Glee-Nal" or "Koke." I handle most everything else, including "Coca-Cola." Yes, sir, I see "Coca-Cola" advertised around extensively. Yes, sir; people coming to my place of business use other names besides "Coca-Cola" in calling for "Coca-Cola," such as "koke" and "dope." I understand those names to apply to "Coca-Cola." Now, I want to tell you if I handled "Koke" or anything they call "dope," and I handled "Coca-Cola,"—I handled all three—and a man came in and asked for "koke" I would give him "Koke," if he asked for "dope" I would give him "Dope," if he asked for "Coca-Cola" I would give him "Coca-Cola, but I handle only the one, and, consequently, I give him only that, and that is "Coca-Cola." Yes, sir, I supply "Coca-Cola" in response to all such requests.

(There was no cross-examination of this witness.)

Deposition of J. A. Condon, for Plaintiff (Recalled).**J. A. CONDON (Recalled).**

Direct Examination by Mr. HIRSCH.

Yes, sir, I testified on the stand yesterday about certain investigations I had made. I made between ninety and ninety-five visits in the city of New Orleans. In about thirty-four places where we called for "Coca-Cola," "Coca-Cola" was served to us. In those places we did not get a bottle of it after it was served to [565] us. In about eight places, I guess, we were served with this product "Koke," in response to calls for "Coca-Cola." Now, let's see, I went to about two places where they told us they didn't have "Coca-Cola" but had "Koke." Three of the others stated they had pop, and about thirty-six places claimed they didn't sell "Coca-Cola"; ten places said they didn't have "Coca-Cola." In those places we went into we didn't buy any bottles, or take away any bottles, where they served us "Coca-Cola" in response to orders for "Coca-Cola," or where they told us they had pop and didn't have "Coca-Cola." The only places we took samples were where they served us "Koke" for "Coca-Cola." Mr. Bogner was with me in those rounds.

Cross-examination by Mr. DENT.

You say that you imagine I didn't have a list prepared for me of the customers of "Koke"; no, sir; not in all cases. Now, we had instructions to go wherever we saw a "Koke" sign,—a "Coca-Cola" sign,—to enter the place and ask for "Coca-Cola."

(Deposition of J. A. Condon.)

Oh, no, sir; we couldn't cover all the soft drink places in New Orleans. I had been furnished with a list of some places, but not all of them. I don't know how many places we had a list of. Not all of the places which served us "Koke" for "Coca-Cola" carried "Koke" signs; some had "Coca-Cola" signs and some had "Koke" signs. No, sir; I am not able to distinguish from memory which stores had which signs; I will have to look at my report on that; we made a report stating whether they had "Koke" signs or "Coca-Cola" signs.

Deposition of O. C. Turrell, for Plaintiff.

O. C. TURRELL.

Direct Examination by Mr. HIRSCH.

I am assistant superintendent of the New Orleans office of the Pinkerton National Detective Agency. Yes, I know Mr. Gillon, Mr. Condon, Mr. Hogan and Mr. Bogner. I gave them instructions about the investigations made. When we received instructions from our Atlanta office to collect this information and evidence in connection with the Koke Company, I instructed the operatives together,—that is Condon and Bogner together, and Hogan and Gillon,—they worked in pairs—and they were instructed to call, practically hit or miss, on the local dealers to determine whether or not any of them were substituting any imitation [566] of "Coca-Cola." We were unable to determine, positively, exactly who was handling the substitute. We did know in a general way who the bottlers for the Koke

(Deposition of O. C. Turrell.)

Company were calling on, but we did not know positively that the people these bottlers were calling on were handling "Koke" or any other substitute for "Coca-Cola"—the fact that they would call on a dealer wouldn't be an indication that they were handling a substitute. They might be selling pop or ginger-ale or root beer or whatever it is they buy. The only thing we could do under the circumstances was to call on these people and find out those that were handling "Koke." These men called, I suppose, on a hundred people, and, as we found—they were instructed, as they would find a dealer that was handling "Koke" or any other substitute for "Coca-Cola," to go in and ask plainly and distinctly for "Coca-Cola" and not ask for "koke" or "dope" or any other of the nicknames for "Coca-Cola." For instance they would go up to the bartender, or the bar, and say to the man that was to serve them, "give me a bottle of "Coca-Cola," stating "Coca-Cola" plainly and distinctly; this man would serve them, and, if he served them with genuine "Coca-Cola," they would drink it, or take a swallow or two of it, whatever they did, and walk out and we were through with that particular man; if the man said "we don't handle 'Coca-Cola,' " or "we haven't got 'Coca-Cola,' but we have got 'Koke,' " they would probably purchase a drink and we would leave that man alone; but if they would go into a dealer or a saloon-keeper, whoever it might be, and ask for a "Coca-Cola" and were served with a substitute, they would drink the substitute and

(Deposition of O. C. Turrell.)

then say to the bar-tender "give me a bottle of 'Coca-Cola' to take away with me and wrap it up," and pay him for this bottle and carry it away; and then they would number it as you find these samples here.

Cross-examination by Mr. LITTLETON.

What I have just been telling were the instructions given by me to the men. Of course, I didn't go with them. Yes, sir; this is a part of our work as a detective agency. We were paid for it at the per diem rate, for each man detailed. All we got out of it was so much per man, that is the only way we operate. The rate has been changed—our regular rate for operations is \$8.00 a day for each man and expenses necessarily incurred in connection with the work. [567] I believe we got that in this case. Since that time the Coca-Cola Company has been granted a special rate of \$6.00 a day, which is the lowest rate we make, but I believe in this particular case we charged them at the rate of \$8.00 a day. When I say we have made them a special rate I mean that our concern has made that rate for them all over the United States, so that they have the services of the Pinkerton Detective Agency all over the United States. Of course, a special rate is granted because they give us a considerable amount of their business. We grant that same rate to the large express companies and to a good many of our clients who give us a considerable amount of work each year. They are valuable customers to us and we make them a special rate. We can well afford to give a man a special rate where he gives us work

(Deposition of O. C. Turrell.)

for several men running thirty days or more, where we couldn't give you, as an attorney, for instance, for two or three days investigation, a special rate; the executive work in connection with an operation of that sort isn't so great,—that is the supervision isn't so great in a matter that runs on from day to day, it doesn't require the same careful supervision. In my testimony a while ago everything I said there was in the way of instructions to those operators. You call attention to the fact that I used the word “substitute” in my testimony, and you say that you suppose in using that I am not giving my personal testimony, but the instructions of my clients as to what I was to try to find out; I was told by my employers that these things were “substitutes” or “imitations,” and that is why I gave this instruction—I don't mean by my testimony that I told my men on the theory that, in my opinion, those things were “substitutes,” I didn't decide that question. We started the operation with the assumption that “Koke” and “Glee-Nol” and “Gay-Ola” and similar beverages were “imitations” of “Coca-Cola.”

“XQ. 10. Now you mean to say that the whole Pinkerton Agency has established that as a rule, that these things are imitations”? “A. Well, those are instructions.” “XQ. 20. From where?” “A. Our Atlanta office, coming directly from the Coca-Cola Company.” It isn't up to us to decide whether any beverage is an imitation of “Coca-Cola.” [568]

Redirect Examination by Mr. HIRSCH.

Yes, sir; we only charge the Coca-Cola Company

(Deposition of O. C. Turrell.)

our regular charges that we charge other people, except that we made a reduction as I have stated. No, sir; we don't get another cent from them in any way, shape or form. No, the men don't get any money in addition to what I pay them—they don't if they expect to stay in the employ of the Pinkerton Agency, we wouldn't have a man to do that. No, sir; as far as I know the operatives have never received a cent except from the Pinkerton National Detective Agency. I pay them a regular monthly salary.

Deposition of H. W. Flowers, for Plaintiff.

H. W. FLOWERS.

Direct Examination by Mr. HIRSCH.

I live at 2478 Royal St., New Orleans. I am head dispenser for Capdau, druggist. I have been working at that line of work six or seven years, but I have been with Mr. Capdau only 4½ or 5 years. All popular drinks are sold at that soda-fountain, such as "Coca-Cola," icecream sodas of all kinds, phosphates of all kinds, etc. I have known this drink "Coca-Cola" ever since I have been in business. Yes, sir; I have seen it advertised extensively. Yes, sir; I have heard the names "dope" and "coke." If a man comes to my soda-fountain and asks for "dope" or "coke" I understand that he wants "Coca-Cola." Yes, sir, that is applied to "Coca-Cola," generally.

(Deposition of H. W. Flowers.)

Cross-examination by Mr. LITTLETON.

I am thirty years old. No, I have sold no other drink of the Coca-Cola kind other than "Coca-Cola." I have sold nothing but "Coca-Cola."

Deposition of J. A. Condon, for Plaintiff (Recalled).

J. A. CONDON (Recalled).

Direct Examination by Mr. HIRSCH.

Yes, sir; I stated this morning that I saw some "Koke" signs, small paste-board, I guess, about 12 inches. I saw those signs in, I guess, five or six saloons.

Cross-examination by Mr. DART.

Yes, sir; I have been on the witness-stand three times in this matter so far. You ask if mine is the kind of memory that [569] has to be refreshed in order to remember a little item of that kind; well, it wasn't asked me this morning, was it? You say that, in other words, I have no independent memory of anything unless I go back and get a memorandum of some kind; I could have told you about how many places, this morning. Oh, yes, I did know about this sign before I refreshed my memory but you didn't ask me about it this morning. You say who asked me to come here and testify and you say you know you didn't; I have been over at the office and they asked me to come back over here; I don't know who sent for me.

Deposition of Frank P. Killilen, for Plaintiff.

FRANK P. KILLILEN.

Direct Examination by Mr. HIRSCH.

I live at 3517 Canal St., New Orleans. I have lived here all my life, since 1880, practically. I am in the cooperage business, with which business I have been connected for eleven years. In the course of my business I have had talks with the Southern Koke Company but have never sold them any barrels. It must have been about sixteen or eighteen months ago, now—people representing these people came out to our place to buy these “Coca-Cola” barrels and said that they only wanted to buy “Coca-Cola” barrels and said they didn’t want to buy any other barrels except “Coca-Cola” barrels, half barrels or kegs. I went and told Mr. Freeman about it, that we had trouble selling these “Coca-Cola” barrels for different purposes and these people said it would suit them—in fact that was the only barrel that suited them. We didn’t have them and I told them he could get them from Peter Milhaus over on Rampart Street and I understood he had sold them. They said they had to have fresh barrels, didn’t need to scrape them or anything else of the kind. They wanted me to pick them up and bring them to them every day that I could get them. No, nothing was said to me about the labels. Yes, sir; I went to the place of business of the Southern Koke Company to look that gentleman up,—when we are going to sell a man barrels we look around his place to see what it looks like. After looking over the matter I de-

(Deposition of Frank P. Killilen.)

cided not to sell them. Yes, sir; I had a conversation with some one there. I told him who I was, you know, told him my business, and he wanted to know if I was going to give them any barrels. I am not positive of it, but I think I told him— [570] you understand—in effect—that I intended to sell them these barrels—because, of course, the price was very satisfactory and everything—until I spoke to Mr. Freeman, or some one connected with his place; and they said “haven’t you got any other use for our barrels?” You know, we buy these barrels from the Coca-Cola people and have an arrangement with them to take all their barrels, and, if we have no sale for those barrels, we can ship them back to Atlanta, but as long as we can deliver them here—I don’t know whether it is of interest to you, but it is a fact, that the freight being so high to Atlanta, we get better prices here.

(There was no cross-examination of this witness.)

Deposition of Albert J. Miller, for Plaintiff.

ALBERT J. MILLER.

Direct Examination by Mr. HIRSCH.

I live at 2427 Rampart St., New Orleans. I have lived in New Orleans all my life—born here. I have been in the saloon business but am now in the confectionery business. I was first with Ramos as manager for Brasios. Yes, sir; they have a soda-fountain business. All soft drinks that you can get from the soda-fountain are served at their fount—no hard drinks. Yes, sir, I sell “Coca-Cola” and am selling it

(Deposition of Albert J. Miller.)

there now, the sixth year. I have known "Coca-Cola" about fifteen or eighteen years. Yes, sir; the drink "Coca-Cola" is advertised extensively. I think it is the best advertised in the country. Yes, sir; we have calls at our fount for a drink under the name of "Koke." When a person calls for a drink of "koke" I understand that they mean "Coca-Cola" and I serve "Coca-Cola" when they ask for it. They ask for "koke," and "dope," too, that's a nickname.

Cross-examination by Mr. DART.

No, sir; we handle no other cola drinks, only I get this "Glee-Nol,"—outside of the regular syrup we make ourselves. Yes, sir; I am now handling "Glee-Nol"; we sell about a quart in six months. Outside of that we handle nothing else but our own syrup which we make, such as strawberry, vanilla, raspberry, etc. No, sir; we have handled no other drinks; we have handled "Gin-fiz—Fan Taz, I mean,—but it lasted only about a month and it was all over with. Yes, sir; "Glee-Nol" is a very recent drink. [571]

Deposition of Fred Schwartsenburg, for Plaintiff.

FRED SCHWARTSENBURG.

Direct Examination by Mr. HIRSCH.

I am now living on Canal Street in New Orleans. I am managing Katz & Besthoff's soda-fountain. I have been with them the last time about three years, but I was with them before that for about the same length of time. We dispense at the soda-fountain the drinks that are commonly called for. We serve all kinds of soda-fountain drinks, including "Coca-

(Deposition of Fred Schwartsenburg.)

Cola.” We have been serving this drink known as “Coca-Cola” for several years and I have known it for several years. Yes, sir, that drink is advertised a good deal. You ask what names are used at our fountain in calling for “Coca-Cola,” “dope” and “koke”—any name that they think we’ll understand that they want “Coca-Cola.” When they use these various names I understand that they want “Coca-Cola” and that it applies to “Coca-Cola.”

Cross-examination by Mr. DART.

No, sir; we don’t sell any other cola drinks, nothing but “Coca-Cola.” We never have had anything to do with other drinks of that same kind. When they do use “koke” they mean “Coca-Cola.” Oh, yes, they use the names “koke” and “dope” and anything they think you will recognize they mean “Coca-Cola.” If a man came in there and asked for anything that didn’t express the name of some other soft drink—anything sounding like “koke” or “Coca-Cola” or “dope”—we would give them “Coca-Cola.” I have never heard a fellow call it a “shot” or “poison.” I am 24 years old.

Deposition of R. W. Brown, for Plaintiff.

R. W. BROWN.

Direct Examination by Mr. HIRSCH.

I live at 803 Pine St., New Orleans. I have been living here since the 15th of February of this year. Before that I lived in Vicksburg, Miss. I am now in the soda-water business and I was in the same business at Vicksburg. We sell all the soft drinks,

(Deposition of R. W. Brown.)

“Coca-Cola,” phosphates, sodas. Yes, sir, “Coca-Cola” is advertised extensively, and in Vicksburg very much so. Yes, sir; I have seen it advertised in New Orleans. Yes, sir; I have heard the names “koke” and “dope” used at our fountain. They apply to “Coca-Cola,” that’s what we generally give them when people use that nickname; they hardly ever call for [572] “Coca-Cola,” they say “dope” or “koke,” something like that.

Cross-examination by Mr. DART.

Well, yes, sir; we have had a drink similar to “Coca-Cola” such as “Cola-Ade,” I believe, is the name of one, and there is several substitutes on the market. I haven’t had any of those since I have been in New Orleans, haven’t handled anything but “Coca-Cola,” that’s since I have been head of the fountain, but there is a bunch of drinks on the market similar to “Coca-Cola.” I don’t recollect the names of all of them, but there are quite a number of them. I think there is one called “Cola-Ade.” No, sir; I never handled them in Vicksburg, I never handled anything but “Coca-Cola.” No, sir; we have never handled anything but “Coca-Cola” in that line—of course, we have had other drinks, such as orange-ade and celery and other drinks. I didn’t say that we have ever handled any of those drinks similar to “Coca-Cola.” What I did say was that there are such drinks on the market.

(The following depositions were taken by the plaintiff at Dallas, Texas, from August 7th to August 12th, inclusive, 1914.)

Deposition of Frederick Conway Peace, for Plaintiff.**FREDERICK CONWAY PEACE.****Direct Examination by Mr. ROGERS.**

I am 29 years old, live in Atlanta, Ga., and am an investigator for the Coca-Cola Co. Before my employment by the Coca-Cola Company I was an operative in the employ of the Pinkerton National Detective Agency. Since my connection with the Coca-Cola Company my duties have been to investigate soda-fountains to see if they were selling "Coca-Cola" and not using substitutes, and, also, to determine the meaning of the words "koke" and "dope" at soda-fountains. In the course of my investigations I have traveled over the States of Mississippi, Louisiana, Alabama and Texas. In Mississippi I visited Hattiesburg, Biloxi, Bay St. Louis, Collins, Poplarville, and Ellisville. In Louisiana I visited New Orleans. In Texas I visited Dennison, Sherman, Van Alstyne, McKinney, Cleburne, Ft. Worth, Dallas, Oak Cliff, a suburb of Dallas, Arlington and Grand Prairie. When I would go into a town I would pick out the first-class drug-stores if they had soda-fountains, and the first-class confectionery stores. [573] The towns I visited and the places I visited were not selected for me by any one; I picked them out after I got to the different towns. No, I did not observe any particular rule in picking out places or stores. After having selected a store I would go in and call for a "Coca-Cola," I would observe from which spigot the syrup to make the drink

(Deposition of Frederick Conway Peace.)

was drawn and I would also observe from which spigot other drinks than "Coca-Cola" that were called for by customers that came in, were drawn,—those who came in and called for other drinks while I was standing there. I remained in each store anywhere from twenty to thirty minutes and during the time I would be in the store I would observe from what spigot the drinks to make "Coca-Cola" "koke" and "dope" were drawn to see if they were all drawn from the same spigot or if there was a distinction made in the spigot for the three drinks. Later on in the day I would call again at the same store and call for "dope" and would again observe which spigot the syrup to make that drink was drawn from, and would also observe from which spigot the syrup to make drinks served in response to calls for "Coca-Cola" and "koke" by other people at the fountain were drawn from, in order to see if they were all drawn from the same spigot. Later in the day I would again call at the same store and ask for a "koke" and would observe from which spigot the syrup to make that drink was drawn, and, while at the fountain, I would also observe from which spigot "dope" or "koke" and "Coca-Cola" were drawn from that were called for by other people who might be at the fountain at the same time. Later on I would call on the manager of that store, or the proprietor, or whoever was in charge, and introduce myself to him, telling him who I was, and what my mission was, and would ask them what they understood the words "koke" and "dope" to mean and

(Deposition of Frederick Conway Peace.)

what they served in response to requests for “koke” and “dope,” and in each and every instance they told me that they thought when a man called for a “koke” or a “dope” he wanted and meant “Coca-Cola” and that “Coca-Cola” is what they served in response to such requests.

Following is a tabulation showing the establishments visited by me at the cities indicated, at the soda-fountains in each of which places, on separate occasions, I called for “Coca-Cola,” “koke” and [574] “dope” and also observed customers using those words. The syrup to make all the drinks served in response to calls for “Coca-Cola,” “koke” and “dope” which I observed at each of these places, was drawn from one and the same container in the fountain.

City Drug Store, Hattiesburg, Miss.

Yellow Pine Drug Store, Hattiesburg.

Fields Drug Co., Hattiesburg.

Moore Grocery Store, Hattiesburg.

Capdau Drug Co., New Orleans, La.

Williams Pharmacy, New Orleans.

Katz & Besthoff, New Orleans.

W. L. Brown Pharmacy, New Orleans.

Peters Pharmacy, New Orleans.

Osenwald & Gross Drug Store, New Orleans.

Kirby Five Cent Store, New Orleans.

Economical Drug Co., New Orleans.

Louisiana Candy Store, New Orleans.

Cusach's Drug Store, New Orleans.

Katz & Besthoff Store, New Orleans.

Lopez Confectionery Co., New Orleans.
 F. O. Blaine's Restaurant, New Orleans.
 Frank L. Simmons Pharmacy, New Orleans.
 Philadelphia Ice Cream Co., New Orleans.
 Power Drug Store, Bay St. Louis, Miss.
 J. A. D'Aquin Drug Co., Biloxi.
 Rush-Grayson Drug Co., Biloxi.
 W. L. Grant Pharmacy, Biloxi.
 Porter Pharmacy, Biloxi.
 Biloxi News Stand, Biloxi.
 Scranton Pharmacy, Pascagoula.
 Moore Grocery Store, Pascagoula.
 A. E. Voyodzis, Pascagoula.
 Pascagoula Pool Room, Pascagoula.
 John H. Hill Confectionery Store, Moss Point.
 Burnham's Pharmacy, Moss Point.
 Southern Paper Co., Moss Point.
 Parlor's Drug Store, Gulf Port.
 Day Drug Co., Gulf Port.
 Jones Bros. Drug Store, Gulf Port.
 George Lambrakee's Soda Fountain, Gulf Port.
 Stratakos, Gulf Port.
 The Imperial Palm Parlor, Gulf Port.
 City Drug Store, Lumberton.
 T. H. Redmond, Lumberton.
 C. Polato Grocery Store, Lumberton.
 Poplarville Drug Store, Poplarville.
 Collins' Restaurant, Poplarville.
 J. W. Bradshaw Grocery Store, Poplarville.
 Barry Drug Co., Columbia.
 Barry Bros. Drug Store, Columbia.
 Columbia Drug Store, Columbia.

Walker Bros. Drug Store, Columbia.
Collins' Drug Store, Collins.
Stovall Drug Co., Collins.
Jones Beacham Restaurant, Collins.
Scott's Restaurant, Hattiesburg.
M. W. Hyde Drug Co., Ellisville.
E. J. Ward's Pharmacy, Ellisville.
Sam Imbragnglic's, Ellisville.
C. A. Abbey & Son's Grocery Store, Ellisville. [575]
City Drug Store, Laurel.
Hattiesburg Drug Co., Laurel.
Century Drug Store, Laurel.
Scruggs' Drug Store, Laurel.
T. J. Wallace Drug Co., Laurel.
Pastime Pool Room, Laurel.
Waldrop's Pharmacy, Meridian.
Renfree Pharmacy, Meridian.
Ware & Kendall's Pharmacy, Meridian.
C. J. Woodruff Drug Co., Meridian.
McCorkle Drug Co., Meridian.
Paragon Pharmacy, Meridian.
Coleman's Pharmacy, Meridian.
Sugerman's Cigar Store, Meridian.
C. Camarinos, Sherman.
Palace of Sweets, Sherman.
Carl R. Noll Drug Co., Sherman.
Craycroft & Stinson, Sherman.
Langford & Keith's Drug Store, Sherman.
Watson's, Sherman.
Turner's Pharmacy, Sherman.
W. L. Bidding Drug Co., Sherman.
People's Pharmacy, Dennison.

Kingston Drug Co., Dennison.

Frank Maniolas, Dennison.

Reynolds Drug Co., Dennison.

Cross' Drug Co., Dennison, Texas.

Tony's Palm Garden, Dennison.

Tango, Van Alstyne.

Brown-Baker Drug Store, Van Alstyne.

J. J. Pitts Soda Fountain, Van Alstyne.

City Drug Store, Van Alstyne.

Hughes Restaurant, Van Alstyne.

Alcove Confectionery, McKinney.

Olympia Confectionery Store, McKinney.

Mitchell Drug Store, McKinney.

Smith's Drug Store, McKinney.

Dearmore & Hughes, Van Alstyne.

Hanner Drug Co., Dennison.

The Tango, Dennison.

Schrodt's Pharmacy, Dallas.

C. R. Smith's Pharmacy, Dallas.

Empire Drug Co., Dallas.

Palace Drug Store, Dallas.

Oriental Drug Store, Dallas.

T. J. Britton's Pharmacy, Dallas.

Tyler Avenue Pharmacy, Dallas.

Davis Confectionery Store, Dallas.

Bishop Avenue Pharmacy, Dallas.

Crystal Pharmacy, Dallas.

Mallory Drug Store, Dallas.

Titche Goettinger, Dallas.

Haskell Pharmacy, Dallas.

Blain Marshall Drug Store, Dallas.

Washington Ave. Pharmacy, Dallas.

Kirby & Blakeney's, Dallas.
Flagg Floral & Confectionery Store, Dallas.
North Dallas Drug Co., Dallas.
Fairmount Pharmacy, Dallas.
Oak Cliff Pharmacy, Dallas.
Gallett & Compton's Drug Store, Dallas.
McKinney Avenue Drug Store, Dallas.
Littlepage Pharmacy, Dallas.
Highland Park Pharmacy, Dallas.
Magnolia Pharmacy, Dallas.
New York Ice Cream Parlor, Dallas.
Gilliland Pharmacy, Dallas.
Oak Lawn Market & Bakery, Dallas.
Thomas' Confectionery Store, Dallas.
Farrow Linder Phar., Dallas.
Harper Confectionery Store, Grand Prairie.
Cooper Drug Store, Grand Prairie. [576]
City Drug Store, Grand Prairie.
Harry Harris Drug Co., Cleburne.
Foster & Fain's Drug Store #2, Cleburne.
C. F. Humphreys, Cleburne.
F. J. Campsey Drug Store, Cleburne.
Foster & Fain's Drug Store, #1, Cleburne.
G. E. Mecham, Cleburne.
Cyrus & Cyrus, Cleburne.
Crow & Walker's Drug Store, Cleburne.
M. A. Anderson, 700 Penn. Ave., Fort Worth, Tex.
R. A. Anderson, 706 Main St., Fort Worth.
Bessie Pharmacy, 1001 Bessie St., Fort Worth.
Bradford Bros., 3200 F. Avenue, Fort Worth.
J. P. Broshear, 1300 Main St., Fort Worth.
Canton Pharmacy, 515 Main St., Fort Worth.

Casey's No. 1, 1314 Terrell St., Fort Worth.

Casey's No. 2, 2338 Hemphill St., Fort Worth.

Clardy's Drug Store, 1600 Vickery Bl., Ft. Worth.

College Ave. Pharmacy, 1730 College St., Fort
Worth.

Corner Drug Store, 1215 Cahoun St., Ft. Worth.

Jack Coulson, 101 North Houston St., Ft. Worth.

Coney & Martin, 810 Main St., Fort Worth.

Curby's Drug Store, 1407 Main St., Fort Worth.

Dillin Bros., 300 S. Jennings St., Fort Worth.

Evans Avenue Pharmacy, 915 Evans Ave., Fort
Worth.

Exchange Drug Store, 107 E. Exchange St., Fort
Worth.

Z. Gaither, 514 S. Main St., Fort Worth.

George's Pharmacy, 1415 E. Front St., Fort Worth.

Glenwood Pharmacy, 1421 Bessie St., Fort Worth.

Grammer Pharmacy, 100 Main St., Fort Worth.

Hickman & Clark, 1408 Main St., (N.) Fort Worth.

Hightower & Harrell Drug Co., 1216 Peach St., Fort
Worth.

Johnston Drug Co., 801 Houston St., Fort Worth.

Jones Drug Co., 104 W. Exchange St., Fort Worth.

Lackey's Pharmacy, 102 W. Front St., Fort Worth.

R. T. Lee, 1230 Henderson St., Fort Worth.

Jones Drug Store, 900 Evans St., Fort Worth.

Lowes Drug Store, 11th & Jennings St., Fort Worth.

Metropolitan, Main St., Fort Worth.

Magnolia Drug Co., 1231 Hemphill St., Fort Worth.

R. E. Martin, No. 1, 215 S. Main St., Fort Worth.

Martin No. 2, 2001 Vickery Blvd., Fort Worth.

Model Pharmacy, 1101 College St., Fort Worth.

North Fort Worth Drug Co., 101 W. Exchange St.,
Fort Worth.

Nowlins Pharmacy, 400 N. Wheeler St., Fort Worth.

Owl Drug Co., 1312 N. Main St., Fort Worth.

Pangburns Drug Store, 501 Houston St., Fort Worth.

Pools Drug Store, 1200 First St., Fort Worth.

Puckett Drug Co., 1564 W. Magnolia St., Fort Worth.

Rafferty, F. L., 400 W. Bois d'Arc, Fort Worth.

Rattan Pharmacy, 211 E. 15th St., Fort Worth.

Reeves Pharmacy, 12th & Jennings St., Fort Worth.

Renfroe Pharmacy, 11th & Main Sts., Fort Worth.

Renfroe Drug Co., 315 Main St., Fort Worth.

E. T. Renfroe & Co., 915 Houston St., Fort Worth.

Renfroe Drug Store, 715 Main St., Fort Worth.

Smythe Drug Co., 2407 N. Main St., Fort Worth.

F. J. Stangl Drug Co., 1300 Hemphill St., Fort
Worth.

Temple Drug Co., 405 E. 9th St., Fort Worth.

10th Ward Drug Co., 2263 Hemphill St., Fort
Worth.

Walkup Drug Co., 1610 Main St., Fort Worth.

M. D. Wallace, 321 N. Elm St., Fort Worth.

Webb's Drug Store, 200 Main St., Fort Worth.

Wilson's Drug Store, 1514-A Main St., Fort Worth.

Wofford-Powers Drug Co., 813-15 Houston St., Fort
Worth.

Belknap Drug Co., 201 E. Belknap St., Fort Worth.

Hassell's Drug Co., 504 Main St., Fort Worth. [577]

J. H. Boord, 1265 Evans St., Fort Worth.

Montcastle Drug Co., 1231 S. Main St., Fort Worth.

Transfer Drug Co., 1218 Houston St., Fort Worth.

Twentieth Ward, 200 N. Main St., Fort Worth.

Booth Bros., 807 Houston St., Fort Worth.

Duchich & Co., 609 Houston St., Fort Worth.

H. B. Jones Con. Co., 101 Main St., Fort Worth.

L. M. Mitchell & Co., 911 Main St., Fort Worth.

Royal Con. Co., 1012 Main St., Fort Worth.

Tupolis Confectionery Co., 1112 Main St., Fort
Worth.

Lake Como, Lake Como St., Fort Worth.

Joseph Rocugno Confectionery, 1510 Main, Fort
Worth.

P. G. Chopmond, S. Jennings St., Fort Worth.

Kelly Bros., 128 Jennings St., Fort Worth.

Union Depot Fountain, Union Depot, Fort Worth.

J. E. Brenner, 204 Main St., Fort Worth.

Club Confectionery, 1600 Back E. Front St., Fort
Worth.

Palace Drug Store, Arlington.

Rexall Drug Store, Arlington.

Corner Drug Store, Arlington.

In the following tabulation the first column indicates the name of the proprietor, manager or dispenser whom I interviewed and secured a statement from as to his understanding of the meaning of the words "koke" and "dope"; the second column indicates the establishment, and the third column the city and State. After making spigot tests in each of these stores by asking for "Coca-Cola," "koke" and "dope" on separate occasions and observing that the syrup to make all drinks served in response to each of these calls was drawn from one and the same container in the fountain, I then interviewed the manager, proprietor or dispenser, as the case happened

to be, introduced myself to him, informed him of the object of my visit, and disclosed to him the result of my spigot test, and then asked him what he understood the words "koke" and "dope" to mean. In each instance the manager, proprietor, or dispenser stated that he understood that the words "koke" and "dope" are used by the public as nicknames for "Coca-Cola." Following is the tabulation referred to:

Ames, Mgr., City Drug Store, Hattiesburg, Miss.

Jones, Prop., Yellow Pine Drug Store, Hattiesburg.

Fields, Prop., Fields' Drug Co., Hattiesburg.

Edwardson, Prop., Moore Grocery Store, Hattiesburg.

Capdau, Prop., Flowers, Disp., Capdau Drug Co.,
New Orleans, La.

A. A. Kaczovoski, Mgr., Evan Douch, Dispenser,
Williams Pharmacy, New Orleans.

F. E. Suter, Mgr., Katz & Besthoff, New Orleans.

W. L. Brown, Prop., W. L. Brown Pharmacy, New
Orleans.

Charles T. Peters, Peters' Pharmacy, New Orleans.

Savaghier, Mgr., Osenwald & Gross Drug Store, New
Orleans.

F. S. Dean, Mgr., Kirby Five Cent Store, New Or-
leans.

George F. Moss, Mgr., Economical Drug Co., New
Orleans. [578]

J. C. Capdenax, Prop., Louisiana Candy Store, New
Orleans.

A. B. Friel, Mgr., Cusach's Drug Store, New Orleans.

Fred Schwartzenburg, Mgr., Katz & Besthoff, New Orleans.

Lopez Confectioner Co., New Orleans.

P. O. Blaine, Prop., P. O. Blaine's Restaurant, New Orleans.

H. S. W. Code, Mgr., Frank L. Simmons Pharmacy, New Orleans.

William Rappold, Mgr., Philadelphia Ice Cream Co., New Orleans.

L. N. Power, Prop., Chris Gibbon, dispenser, Power Drug Store, Bay St. Louis, Miss.

J. A. D'Aquin, Mgr. & Prop., J. Morris & Catshot, dispensers, J. A. D'Aquin Drug Co., Biloxi.

Dr. Rush, Prop., Rush-Grayson Drug Co., Biloxi.

Grant, W. L. Grant Pharmacy, Biloxi.

Joseph L. Brenners, Porter Pharmacy, Biloxi.

E. Berkley, Biloxi news stand, Biloxi.

Dr. McBay Young, Prop., Scranton Pharmacy, Pascagoula.

Moore, Mgr., Moore Grocery Store, Pascagoula.

A. E. Voyodzis, Prop., A. E. Voyodzis, Pascogoula.

Mike Nomane, Prop., Pascagoula Pool Room, Pascagoula.

John H. Hill, Prop., John H. Hill Confectionery Store, Moss Point.

Mr. Burnham, Burnham Pharmacy, Moss Point.

Dr. Sharp, Mgr., Southern Paper Co., Moss Point.

J. W. Culver, Mgr., J. O. Baker and Lewis Mossino, dispensers, Parlor's Drug Store, Gulf Port.

Mr. Day, Prop., Day Drug Co., Gulf Port.

Dr. H. H. Jones, Mgr., Jones Bros. Drug Store, Gulf Port.

George Lambralsey's Soda Fountain, Gulf Port.

Lewis Stratakos, Lewis Stratakos, Gulf Port.

W. K. Porter, The Imperial Palm Parlor, Gulf Port.

Dr. T. P. McInnis, Prop., City Drug Store, Lumberton.

C. Polato, Grocery Store, Lumberton.

Dr. Fred W. Smith, Mgr., Poplarville Drug Store, Poplarville.

Miss Kate Collins, Prop., Mrs. C. W. Cleghorn, dispenser, Collins' Restaurant, Poplarville.

J. W. Bradshaw, Grocery Store, Poplarville.

Columbia Drug Store, Columbia.

Barry Drug Co., Columbia.

Dr. Harris, Mgr., Dr. Ratcliff Faraberry, dispenser, Barry Bros. Drug Store, Columbia.

Dr. G. H. Wells, Prop., Walker Bros. Drug Store, Columbia.

O. S. Mayfield, Prop., Collins' Drug Store, Collins.

Dr. Stovall, Prop., Stovall Drug Co., Collins.

Mr. Jones, Jones Beacham Restaurant, Collins.

Mr. Scott, Scott's Restaurant, Hattiesburg.

Mr. Hyde, M. W. Hyde Drug Co., Ellisville.

Dr. Ward, E. J. Ward's Pharmacy, Ellisville.

Sam Imbragnglic, Sam Imbragnglic, Ellisville.

Mr. Abbey, C. A. Abbey & Son, Ellisville.

City Drug Store, Laurel.

G. W. Nicholson, Hattiesburg Drug Co., Laurel.

W. S. Ames, Mgr., W. H. Hill, dispenser, Century Drug Store, Laurel.

Mr. Scruggs, Scruggs' drug store, Laurel.

Mr. Wallace, T. J. Wallace Drug Co., Laurel.

L. Banker, Mgr., Pastime Pool Room, Ellisville.

J. B. Waldrop, Mgr., C. W. Harper, C. V. Colley and Roy Ray, dispensers, Waldrop's Pharmacy, Meridian.

Mr. Renfroe, Prop., Renfroe Pharmacy, Meridian.

J. C. Ware, Ware & Kendall's Pharmacy, Meridian.

C. J. Woodruff, Prop., C. J. Woodruff Drug Co., Meridian.

Mr. McCorkle, Prop., McCorkle Drug Co., Meridian.

Mr. Heiss, Mgr., E. P. Simmons, dispenser, Paragon Pharmacy, Meridian.

Dr. Coleman, Coleman's Pharmacy, Meridian.

V. Knapp, Manager, Sugerman's Cigar Store, Meridian.

Manager, C. Camarinos, Sherman, Texas.

Mr. Plea, Palace of Sweets, Sherman. [579]

Mr. Noll, Prop., Carl R. Noll Drug Co., Sherman.

Mr. Stinson, Craycroft & Stinson, Sherman.

Manager, Langford & Keith's Drug Store, Sherman.

Mr. Watson, Watson's, Sherman.

Dr. Turner, Turner's Pharmacy, Sherman.

W. L. Bidding Drug Co., Sherman.

Manager, People's Pharmacy, Dennison.

Mr. Kingston, Kingston Drug Co., Dennison.

Dispenser, Frank Maniolas, Dennison.

Mr. Ramsey, Mgr., Reynolds Drug Co., Dennison.

Mr. Cross, Cross' Drug Co., Dennison.

Tony Giarraputo, Tony's Palm Garden, Dennison.

S. G. Davis, Prop., Tango, Van Alstyne. .

Mr. Brown, Brown-Baker Drug Co., Van Alstyne.

J. J. Pitts, Prop., J. J. Pitts Soda-Fountain, Van Alstyne.

Oliver G. During, City Drug Store, Van Alstyne.

Mr. Hughes, Prop., Hughes Restaurant, Van Alstyne.

Messrs. Coffee, Props., Alcove Confectionery, McKinney.

C. Camarinos, Prop., Olympia Confectionery Store, McKinney.

Mr. Mitchell, Prop., Mitchell Drug Store, McKinney.

Major Smith, Smith's Drug Store, McKinney.

Dr. Hanner, Hanner Drug Co., Dennison.

C. H. Hughes, Dearmore & Hughes, Van Alstyne.

Mr. Schrodtt, Prop., E. L. Day, Dispenser, Schrodtt's Pharmacy, Dallas.

C. R. Smith, C. R. Smith's Pharmacy, Dallas.

L. E. Kerr, Mgr., Empire Drug Co., Dallas.

Mr. Nossett, B. W. Fuller, dispenser, Palace Drug Store, Dallas.

R. C. Coppedge, Prop., Oriental Drug Store, Dallas.

T. J. Britton, Prop., Jeff Britton, dispenser, T. J. Britton's Pharmacy, Dallas.

B. H. Anderson, Tyler Avenue Pharmacy, Dallas.

Mallory Drug Store, Dallas.

Lewis Davis, Prop., Davis Confectionery Store, Dallas.

Mr. Littlepage, Bishop Avenue Pharmacy, Dallas.

Harris and Clark, Props., Crystal Pharmacy, Dallas.

R. H. White, Mgr., Titche & Goettinger, Dallas.

I. C. Guy, Haskell Pharmacy, Dallas.

Marshall, Blain Marshall Drug Store, Dallas.

Manager, Washington Avenue Phar., Dallas.

Blackeney, Kirby & Blackney, Dallas.

Mrs. E. C. Flagg, Flagg Floral & Confectionery Store, Dallas.

- B. C. Camp, Prop., North Dallas Drug Co., Dallas.
 W. N. Craig, Fairmont Pharmacy, Dallas.
 L. O. Donnelly, Mgr., Oak Cliff Pharmacy, Dallas.
 B. B. Brown, Clk., W. H. Gould, dispenser, Gallett &
 Compton's Drug Store, Dallas.
 F. L. Johnson, Mgr., Ernest Dowdy, dispenser, Mc-
 Kinney Avenue Drug store, Dallas.
 T. H. Littlepage, Prop., Littlepage Pharmacy,
 Dallas.
 W. B. Dougherty, Prop., Highland Park Pharmacy,
 Dallas.
 J. A. Duncan, Magnolia Pharmacy, Dallas.
 Dispenser, New York Ice Cream Parlor, Dallas.
 Mr. Gilliland, Prop., Gilliland Pharmacy, Dallas.
 W. T. Coble, Prop., Oak Lawn Market & Bakery,
 Dallas.
 Mills, Mgr., Thomas' Confectionery Store, Dallas.
 J. E. Blackwell, Mgr., S. H. Browning and C. A.
 Reeves, dispenser, Farrow-Linder Pharmacy,
 Dallas.
 S. H. Althoff, Prop., H. D. Harding, dispenser, Owl
 Drug Store, Dallas. [580]
 Mr and Mrs. Harper, Harper Confectionery Store,
 Grand Prairie.
 Mr. Butcher, City Drug Store, Grand Prairie.
 Johnson, Prop., Mr. Sykes, Mgr., Cooper Drug Store,
 Grand Prairie.
 Harry Harris, Prop., R. C. Johnson, Dispenser,
 Harry Harris Drug Co., Cleburne.
 M. S. Ball, Mgr., G. C. Dorris and W. R. Dalton, dis-
 pensers, Foster & Fain's Drug Store #2, Cle-
 burne.

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C. F. Humphreys, Prop., J. M. Williams, dispenser,

C. F. Humphreys, Cleburne.

E. J. Campsey, E. J. Campsey Drug Store, Cleburne.

W. B. Featherstone, Jr., A. C. Featherstone, E. C.

Reeves and William Binder, dispensers #1,

Foster & Fain's Drug Store, Cleburne.

F. B. Guard, dispenser, C. E. Mecham, Cleburne.

R. P. Cyrus, Cyrus & Cyrus, Cleburne.

Dr. C. R. Walker, Crow & Walker's Drug Store, Cleburne.

C. D. Williams, Palace Drug Store, Arlington.

Jim Rose, Corner Drug Store, Arlington.

At a number of places I also made consumers' tests,—that is to say, I instructed the dispenser on duty to ask each and every person who called at the fountain for either "koke" or "dope" if he meant "Coca-Cola," and I stationed myself in the vicinity of the fountain where I could hear the original calls by the customers, hear the questions of the dispensers, and the replies thereto made by the customers. The following tabulation shows the places where these customers' tests were made. At the fountain in these places, during the time specified, in my presence, every person using the word "koke" or "dope" in ordering was asked by the dispenser if he meant "Coca-Cola" and in each instance the answer was in the affirmative. In the following tabulation the first column gives the town, the second the name of the store, the third the time during which the test was made, the fourth the number of calls for "Coca-Cola," the fifth the number of calls for "koke," and the sixth the number of calls for "dope";

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		CC.	K.	D.
New Orleans, La.	Capdau Drug Co., 8 A. M. to 1 P. M.	113	3	8
New Orleans, La.	W. L. Brown Co., all day	38	7	8
New Orleans, La.	Peters Pharmacy, 9 A. M. to 7 P. M.	21		3
Bay St. Louis, Miss.	Power Drug Store, all day	38		18
Biloxi, Miss.	J. A. D'Aquin Drug Co., all day	19	6	28
Gulf Port, Miss.	Parlor's Drug Store, 8:30-8 P. M.	35	1	101
Columbia, Miss.	Barry Bros. Drug Store, 4:40 P. M. 9:30 P. M.	11		23
Laurel, Miss.	Century Drug Store, 8:20 A. M. 12 M.	24		33
Laurel, Miss.	Scruggs' Drug Store, 2 hrs.	11		9
Meridian, Miss.	Waldrop's Pharmach, 8 A. M. 7:30 P. M.	105		215
Sherman, Texas	Carl R. Noll	7	36	
Dennison, Texas	C. D. Kingston's Drug Store, 2:30 P. M. 8 P. M.	11	41	
Dallas, Texas	Oriental Drug Co., 10 A. M.—5 P. M.	9	47	
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Dallas, Texas	Palace Drug Store, 7 P. M.—10 P. M.	5	14	
Dallas, Texas	Palace Drug Store, 7 P. M.—10 P. M.	5	14	
Dallas, Texas	Schredt's Drug Store, 7:25 A. M. 8-30 P. M.	5	9	1
Dallas, Texas	Britton's Phar., 8:45—11:15 A. M.	14	28	3
Dallas, Texas	Thomas' Confectionery Store, 8:15 A. M. —12 M.	22	40	
Dallas, Texas	Olympia Confectionery Store, 1:15—5:50 P. M.	22	17	
Dallas, Texas	Farrow-Linder Phar. 7:10 to 10:25 P. M.	9	9	
Dallas, Texas	Owl Drug Store, 7:30 to 11:35 A. M.	9	28	

At the Yellow Pine Drug Store at Hattiesburg, Miss., I first called for a "koke," later in the day returned and called for "dope"; and, still later, returned and called for "Coca-Cola," and, in each instance, noted the container from which the syrup to make each drink was drawn. I observed the syrup to make all three of my drinks had been drawn from the same spigot. I then met Mr. Jones, the proprietor of that store, and inquired of him what he meant and what his customers meant when they called at the soda-fountain and asked for a

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“koke” or “dope”—because when I was in there I heard Mr. Jones say “dope.” He said he meant “Coca-Cola” and that, in his opinion, the customers meant “Coca-Cola,” and that’s what he gave them at his soda-fountain whenever they called for “dope” or “koke.” While at Hattiesburg I also called at the Corner Drug Store, but I didn’t have an interview with the proprietor of that particular store at that time. I talked to him about something else and made no aprticular test there at that particular time. I was just in and out there all the time, I had other business with him.

Among other places I called on Peters Pharmacy, the corner of Baronne and Poydras Streets, New Orleans, and interviewed Mr. C. G. Peters, the proprietor of this store. I told him who I was and inquired of him what his opinion was when people called for “koke” or “dope,” what they meant. Mr. Peters said they meant “Coca-Cola,” that he had been handling “Coca-Cola” for eighteen or twenty years and that “dope” and “koke” had been nicknames for “Coca-Cola” long before any imitation product ever came on the market. [582] Among other places I also called at Osenwald and Gross Drug Store, on Canal Street, in New Orleans, and, after making a spigot test there as above-described, and after introducing myself and explaining my mission, I interviewed Mr. Savaghier, the manager, and inquired of him what he thought people meant when they called at his soda-fountain for “dope” or “koke”; and he informed me that they meant

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“Coca-Cola”; that “Coca-Cola” was the only thing they served in the way of a cola drink at that fountain. In my interview with F. S. Dean, at what was formerly the Kirby Five Cent Store, but which is now the Woolworth Company, having recently been purchased by the latter concern, he informed me, among other things, that “Coca-Cola” was the only thing in the nature of a soda drink that was sold by his Company. In my interview with P. O. Blane, proprietor of Blane’s Restaurant, 641 St. Charles Street, New Orleans, I first called for “Coca-Cola” and later in the day called for “koke.” When I called for the “Koke” Mr. Blane himself served me. When I said “Koke” Mr. Blane said, “Do you want a ‘Coca-Cola’?” I told him that I did. I informed him who I was and asked what he thought people meant when they called at his place for “dope” and “koke” and he informed me that they meant “Coca-Cola” and that he had no use for the Koke Company and said if I had called for “dope” he wouldn’t have paid any attention to me because he didn’t know what I wanted and might have wanted morphine. In my interview with William Rappold, manager of the Philadelphia Ice Cream Company, 1034 Camp Street, New Orleans, he told me, among other things, that about a year ago he put “Koke” in his fountain and sold it for “Coca-Cola,” not telling people any difference. He said it was not necessary to tell them for, as a general rule, they knew it and usually made a complaint and that it nearly ruined his trade before he knew it. At the

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Porter Pharmacy, opposite the L. & N. depot, at Biloxi, Miss., I happened to see a dispenser whom I knew, Joseph L. Brenners, and I went in and asked for a "Koke." Brenners looked up and said, "you better be careful how you talk around here, calling for 'Koke,' you are apt to get 'Koke'—just cut out that 'Koke' and say 'Coca-Cola' or the chances are you won't get 'Coca-Cola.' " [583] At Pascagoula Pool Room, at Pascagoula, Miss., I looked in the ice-box myself and saw that they had nothing in there but "Coca-Cola," which they served when "dope" was called for. In the consumers' test which I put on at Parlor's Store at Gulf Port, Miss., dispenser Baker had 63 calls for "dope," and 14 calls for "Coca-Cola," and one call for "service" and in each instance when "dope" and "service" were called for, Baker inquired what they meant by "dope" and "service" and the consumer said he meant "Coca-Cola." At the Day Drug Company, at Gulf Port, Miss., in my interview with Mr. Day, the proprietor of the store, he informed me that, among other things, about a year ago "Koke" was sold at his fountain and that it nearly ruined his trade. At Ellisville, Miss., I called at the Hyde Drug Company. I called there three times during the day, once for "Coca-Cola," once for "dope" and once for "Koke," and I noticed that in each instance the syrup was drawn from the same spigot to make each of the drinks. I later interviewed Mr. Hyde, who informed me that it was his understanding when people called for "dope" or "koke" that they meant

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“Coca-Cola” and that was what he gave them. At the Renfroe Pharmacy, at Meridian, Miss., in my interview with Mr. Renfroe, the proprietor, he acknowledged to me that he was not serving “Coca-Cola” at all, but that he was serving a substitute, and he told me he was handling “Koke” made by the Southern Koke Company, getting it from New Orleans, and he promised me that he would quit doing it. He told me he was glad that I caught him substituting; his conscience was hurting him a long time, and he was glad to quit it anyhow. On my visit to the W. L. Bitting Drug Company, at Sherman, Texas, I did not interview anyone at that store in regard to the meaning of the words “dope” and “koke.” In my interview with Mr. C. D. Kingston, the proprietor of the Kingston Drug Company, Dennison, Texas, he informed me, among other things, that about a year ago a salesman from Greiner-Kelly Drug Company brought a man to his store and introduced him, that this man asked Mr. Kingston if he would have a drink and Mr. Kingston, thinking he meant a drink of whiskey, was going to accept the invitation, when the man took from his pocket a whiskey flask and poured out the syrup and made a drink and informed [584] Mr. Kingston that it was “Koke” made by the Koke Company of Dallas, Texas, and that his Company had trademarked that “Koke” and was going to sell it to every soda-fountain. Mr. Kingston stated he had been a “Coca-Cola” enthusiast ever since he had been in business and at once became indignant with

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the man. In the consumers' test made at the Oriental Drug Company, Dallas, Texas, I remained at this store from 10 A. M. to 5 P. M., during which time forty-seven persons called for "koke" and nine persons called for "Coca-Cola." Mr. Ernst Brown and R. S. Evans were dispensers. I heard the customers call at the soda-fountain for those drinks, and heard the questions which the dispensers put to them, and heard the responses of the customers to the dispensers' questions. In each and every instance the customers replied that they wanted "Coca-Cola."

In all, I visited 27 towns, and 192 establishments and I interviewed 192 proprietors, managers or dispensers. In the observation tests, when no questions were asked, I heard 128 calls for "koke," 115 calls for "dope" and 289 calls for "Coca-Cola." In my consumers' tests about which I have testified, I heard 290 calls for "koke," 430 calls for "dope" and 507 calls for "Coca-Cola." In each instance in these tests where the consumer asked for either "koke" or "dope" he was asked by the dispenser if he meant "Coca-Cola," and in each and every instance he replied that he did. You ask me to state what the fact is with reference to the comparative prevalence of calls for "Coca-Cola" under the name of "dope" West of the Mississippi and East of the Mississippi; and about 75 per cent of a hundred say "dope" East of the Mississippi, about one out of a hundred calls for "koke"; whereas, West of the Mississippi about eighty-five per cent of the consum-

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ers say "koke." In no instance where "Coca-Cola" was furnished in response to requests for "koke" or "dope" did any purchaser reject it as not what was wanted. As the result of my own observation, asking for "koke," "dope" and "Coca-Cola" myself, I have come to the conclusion that the words "Koke" and "dope," as applied to a soft drink means, "Coca-Cola." As a result of my interviews and consumers' tests, I have come to the same conclusion. You ask me to state whether or not the meaning I have given the words "koke" and "dope" applies among the trade and [585] with the public. Yes, sir, it means "Coca-Cola." I saw "Coca-Cola" extensively advertised in every town I visited. There was not a town where "Coca-Cola" was not advertised. The conspicuous thing about all this advertising was the trademark "Coca-Cola." I did not see any advertising of any product under the name "Koke" or "Dope" in any of the towns I visited. I have never seen "Koke" or "Dope" advertised anywhere, at any time, in any town.

Cross-examination by Mr. DART.

I first became connected with the Pinkerton National Detective Agency in 1911, when I was with that detective agency I was doing detective work, but since I have been with the Coca-Cola Company I have been doing any and all work that came to our office in connection with the Coca-Cola Company, and it was not all of it detective work, some of it was of the nature of detective work. The bulk of

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the work I have been doing recently has been making investigations. Prior to the last six months I had not been doing much of this kind of work. I had been looking after the advertising matter to see that the towns were well advertised for "Coca-Cola" and investigating "Coca-Cola" bottling plants controlled by the Coca-Cola Company throughout the United States and work of that kind. There are three men a-foot on the same investigation I am on for my company that I know of, that are known as investigators. These are Mr. S. Friend of Atlanta, Mr. T. L. Boswell, of New Orleans, and Mr. D. E. Bolton, of Atlanta. I have not met any others of the states, I have been going through representing my Company except those I have just mentioned, but, of course, every salesman connected with the Coca-Cola Company, and every man connected with the Coca-Cola Company, is on the lookout for just exactly what I am—always in the interest of the Company. I know there have been Pinkerton Detectives—that the Pinkerton Detective Agency has been employed to do work for the Coca-Cola Company, but just what work, I don't know, I wasn't in Atlanta at the time, the testimony was taken there, and didn't know that there were seven or eight detectives examined as witnesses in this case at that time. "XQ. 13. Let us put it this way: The Coca-Cola Company is just now [586] engaged in a determined effort to stamp out such rivals as the one we are now studying?" "A. It has been my understanding that they have always done this, they have

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always looked after the interests of their business in this like manner." No, sir; it is not a fact that they have been a little more vigilant and active in the last six or eight months; they are simply following their usual course now. Yes, sir; I was called on to do work of this character prior to six or eight months ago. You say you thought I said I hadn't been called upon to do any work; I said I had not been doing very much of this work during the last six months, you have got it backwards. No, sir; I did not say that I had been employed by the Coca-Cola Company for the last two years. I said in 1911, I went with the Pinkerton Agency—you didn't ask me how long I have been connected with this company. You say that if I want to explain when I went with this company I am at liberty to do so, and that you are waiting on me; I am not volunteering anything, I will answer your questions. You say that you are now giving me an opportunity to say when I went with the company and you ask me if I will say when I went with this company; I am not giving any information, I am answering your questions. You again ask me when I came with this Coca-Cola Company in my present capacity as it's employee; I have been doing this work for the Coca-Cola Company for about two years previous. No, sir; not under their pay as their employee. You ask if it was under any pay of theirs at all; yes. I had been doing this work for them while employed by the Pinkerton Detective Agency for about two years. I became an employee of the Coca-Cola

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Company in March of this year. I was detective up to March, 1914, in the employ of the Pinkerton people and have become a paid employee of these people since March, 1914. You say that, as this is the beginning of August, I haven't been very long with the Coca-Cola people, and you ask if I was taken off of exactly the same kind of work I was doing for them out in the field, in a certain competition and rivalry, and have been doing that kind of work ever since I have been employed by them; I have been doing work for the "Coca-Cola Company, but not of the same nature, as I stated before; I have been doing various investigating work. [587] No, sir, my entire work has not been what is called investigating, that is carried on by the Pinkerton people; since I have been with the Coca-Cola Company I have done work which I never did for them while with the Pinkerton Detective Agency. You say that since I won't give you an answer you will ask me squarely if it is true that I have done nothing for the Coca-Cola Company except to investigate, out of doors, questions of the nature that I am testifying about here, connected with rival concerns or connected with my own concern; I have been an out door investigator for the Company, but my work has not been confined to investigating rival concerns. Yes, sir, I said I had met three other men doing the same kind of work and they are employed by my company and are also ex-Pinkerton men. I don't know when they became associated with this company. It has been since the first of January of this year that I first knew they

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were associated with the company and employees in the same line. You ask if I found them in the employ of the company when I came in, or if they have come in since I took hold; I have run on to them since. When I was employed in March of this year my first duty for the company was to investigate a big drug company in Florida, who was substituting, and from that I have been doing along out of doors on that or similar work ever since, but also on other work that was not similar. I stayed in Florida about three weeks. I went from Florida to Atlanta, remaining in Atlanta for a few days and went to Hattiesburg, on the same operation,—that is, on the previous one, the one that took me to Florida first. I spent two or three weeks on that. Yes, sir, that was a substitution of some other soft drink for ours, “Coca-Cola.” The Hattiesburg venture was partly on the same subject matter and partly to investigate a man who was substituting, and then to see after advertising matter and things of that kind for the company. I remained in Hattiesburg three weeks. That was part of the period I was covering in the testimony I gave yesterday. I was in the state of Mississippi a month or more—six weeks. I have spent time in Florida and Mississippi on the general work of investigating substitutors, but I have not spent any time in Georgia or Alabama on the same subject since I have been with the company direct. From Mississippi [588] I went to Louisiana, still engaged in the same kind of work, and from Louisiana I passed on to Texas. You say that you judged

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yesterday, during the fore part of the day, that most of the testimony I was giving was reading from written documents, and you ask if that's correct; they were my written statements in my own handwriting, memorandums that I made. "XQ. 57. I ask you again—the testimony you were giving in the fore part of yesterday was in fact being read by you from written papers of some kind which you had in your hand; is that not true?" "A. I had to refresh my memory." "XQ. 59. I assume you answer my question in the affirmative; yesterday you were reading from those written statements of yours when giving your testimony?" "A. Yes, sir, I read from them to refresh my memory. "XQ. 60. I notice time and again as you read that you uttered your testimony in the tone of a man who was reading—it's a fact you were reading sometimes as much as a page or two pages of that matter—is it true?" "A. I read all that was there." "XQ. 61. Now you say what you was reading from was memorandums made by you at the time; is that not actually untrue and is it not a fact that you were reading from reports you had sent in to your people—called reports, and that they were not memorandums in any sense of the word?" "A. They were my memorandums, that were sent in to the company and kept for me, I don't carry them around with me." "XQ. 62. You make a distinction between 'memorandum' and 'report'; I ask you again: Were you not reading yesterday from written reports which have been made by you to your company?" "A. Yes, sir." "XQ. 63. Now

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I noticed later on in the course of the day that you came to a point where you were without reports and that you were unable to give any data of that at all; that's a fact, is it not?" "A. At Arlington, I had no report for Arlington, and, having called on so many places, it was impossible for me to remember the names of those people I called on at Arlington, and we passed it up for the time being." "XQ. 64. And this morning you have supplied the data." "A. Yes, sir." "XQ. 65. Also I noticed yesterday some places where you said you had sent in your written report, not knowing, I suppose, you would be called upon to testify so soon, and that, therefore, you had to pass them up; is [589] that true?" "A. That's true." "XQ. 66. So that, if you had to rely on your memory as to what you had heard and seen on this trip, unsupported by this contemporary reporting you had made, you would be in a very poor way, wouldn't you?" "A. I couldn't remember it, no, sir." You say you notice that these reports which I made were mostly in ink, but that some of them, though, were in pencil, and you ask if I wrote them when I interviewed the parties, or if they were written at some subsequent time, that evening or the next day; if a man told me a statement regarding the "Koke" salesman, I usually wrote that down—in fact I always did write that down then and there word for word as he told it to me; now the other part of the day's work I would write in the afternoon when I would finish my work. Just as soon as I got through my work I would write my reports for that

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day. No, sir, I do not mean to say that I always wrote down substantially what the man told me then and there in his presence, but sometimes I did. No, sir, I did not make my contemporary chronicles in the presence of the persons stating the facts, that's not always so, not in his presence. On the contrary, I carried away in my head the knowledge of what the man said and reduced it to writing subsequently. Yes, after having made memoranda of what a man said to me, I have read it back to him. You ask if I can name any out of the great number of people I called on to whom I read back the statement; yes, sir, Stinson, that's one, I can't recollect them all, there are too many. No, sir, Stinson is not the man who, according to my testimony, was so vigorous in denouncing the fraud of "Koke" and things of that kind; he isn't the man, I judge, you have reference to, but he was one of the men whose statement I read. He is one of the men from whom I read an elaborate statement condemnatory of "Koke." Yes, sir; I read his statement back to him. Yes, sir; that man to-day is perfectly cognizant of what I testified about and what I said he said to me. You ask if he is a partisan of the Coca-Cola Company; he is a friend of the Coca-Cola Company, he is no friend of the Koke Co. Every man that would make me a statement of a "Koke" salesman having called on him, before I did anything else, I wrote that man's statement down, but I did not always read it back to him. [590] You ask if I can think of any other person to whom I read back a statement; yes, sir; I can

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think of Carl R. Noll. You say that's only two; well, that's enough. Out of the array of names I have given you I have only two men who actually saw me write their statement and have it read back to them to corroborate it. It's true of the remainder of the people that I wrote my memorandum out of their presence, if I made one at all, and then subsequently incorporated that statement in a report to my company. When I received a man's statement outside of the two gentlemen I have named, I made a note of it, then at some subsequent time later I incorporated the substance of that into a report to my company. I made the reports to the company every day, in the evening after the day's work was over. My first work for the Coca-Cola Company was to go out to detect substitutes. You say that whenever I found some man suffering from a case of inflamed conscience, or some man who thought he had been caught at it, or some man who felt that it was wise to play scared, of course, I wrote his statement down very quickly, and you ask if that's the kind of stuff I was searching for; no, sir, that's partly wrong; I don't deny that I was out to find and get confessions, If I could, I wanted to get all the people I could who were substituting, but when I caught a fellow substituting I didn't get statements from him always. You ask if I deny that, whenever I got somebody to confess, that I was glad and took it down and reported it; I assure you there is lots of people I caught substituting I didn't report at all. Yes, sir; I deny that when I caught a man and got him to confess I

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always wrote that down and pushed it on to headquarters. Lots of men told me they did substitute and I didn't report it. I mean to say I did not report those confessions. You say that whenever I got a man who confessed to substitution and professed his contrition, and denounced him who seduced him from the straight and narrow path, that I put down and reported it; well, not always; no, sir. There are still sinners out here in the business world whom I haven't reported to headquarters, and who have escaped paying, in my fashion, the penalty of their sins. You say you see from my testimony that, having started out to find substitutes, I found a [591] great many "Coca-Cola" friends; I found "Coca-Cola" in almost every drug-store I went to,—some I didn't find it. Yes, sir; I found "Coca-Cola" wherever I left a train pretty near; I found it literally spread abroad over the face of the earth. Most of the places I went to I found "Coca-Cola" sellers. I discovered on this trip that the "Coca-Cola" influence is very large and very wide and that "Coca-Cola" is everywhere. You ask if it's like Great Britain, as we studied in our school days, like the flag of Great Britain, that rises with the sun and is still floating on the housetops when the sun sets; Great Britain doesn't interest me—"Coca-Cola," does. However, I found "Coca-Cola" wherever I went. You ask if I found that the "Coca-Cola" influence was strong everywhere I went, and if I found its partisans and adherents; I found "Coca-Cola" most everywhere I went and most folks were friendly

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towards the product, "Coca-Cola," and willing to help out the detective or investigator. No honest man likes a substitutor. You ask if they were willing to help out the detective or investigator of the Coca-Cola Company as soon as he disclosed himself; most people are, most honest men are. You ask if they immediately fell in love with me as an honest man engaged in the same kind of work; most of them admired me for my honesty and for my courage in unearthing these rascals,—yes, sir, even though he had to do it by having to break and suffer, that's true. You ask if there was a single place where I went to that I didn't find "Coca-Cola" advertised in literature, and general information about "Coca-Cola"; no, sir, that isn't true; I found "Coca-Cola" advertised almost everywhere I went to, but there were some stores I went to where I didn't find it. However, in even those stores where I did not find "Coca-Cola" advertising I found such advertising outside of their stores in the same towns or in other stores. In most every town I found that every man who had a means of advertising had a space occupied by the advertising of "Coca-Cola." Yes, sir; looking out the window now I can see a "Coca-Cola" advertisement from here. I didn't find any literature, but I found advertising matter such as calenders and one thing and another. [592] Yes, sir, I found all these people to be great adherents of "Coca-Cola." Most every man who handles "Coca-Cola" is,—yes, sir; and is willing to help us run down anything that they look upon as a substitute. Yes, sir; I attribute

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that to the trademan's love of a square deal and honor, and hatred of the man who is substituting. You ask if it ever struck me that the average tradesman would a great deal rather see the other fellow shut out from carrying on anything that would take part of the trade away from him,—if I ever struck that kind of honor; I don't exactly understand you.

“XQ. 131. You believe that the tradesmen whom you have referred to as loving you and your kind and hating the substitutor and his kind—you believe that,—they are adherents of “Coca-Cola” and helping you in this investigation, you have said,—you believe they are doing so on the principles of honor that actuate all men who love right; I ask you now, whether you ever heard that the average rival in business is always actuated by the desire to crowd his rivals out and to take his money and is certain that the other man would otherwise get—did you ever hear of that?” “A. I know the man who is using ‘Coca-Cola’ and has used it for any length of time becomes a friend to it, an honest product manufactured by an honest concern. And the man who has handled ‘Koke’ or a man who has not handled it but knows of it, doesn't consider—the average druggist doesn't consider ‘Koke’ an honest product and doesn't consider that it was manufactured by an honest concern—they look upon it as a substitute for ‘Coca-Cola.’ ” “XQ. 132. You have been in the employ of the Coca-Cola Company four months, and within that time you have learned all this, I suppose; that it is honest, all people that buy from it are hon-

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est, that the other things are dishonest, and the others who bought from it are substituters and rascals; you have learned all that?" "A. I have been with the Coca-Cola Company several months and I have learned that 'Koke' is a substitute for 'Coca-Cola'." You ask where I became a "Coca-Cola" expert—where and how I was trained to the knowledge of "Coca-Cola" being what it is; I have been drinking "Coca-Cola" twenty years. You ask if I drank it then in the days when it was known as cocaine extract; no, sir; I haven't never drank it when it was known as a [593] cocaine extract. You say if I drank it twenty years ago it was the general information then; it was not my information. When I was nine years old I was smart enough to drink "Coca-Cola" and know I wasn't drinking it but getting something else if I wasn't getting it. I didn't know what "Coca-Cola" was but it was an honest product. No, sir; I haven't been drinking it ever since. You say that when I was twenty I knew it was an honest product and ask if that stuck in my mind ever since; when I was ten years old I knew that. You ask how I knew that the two hundred or three hundred people I visited who served me "Coca-Cola," as I thought it was—how I know it was "Coca-Cola," the genuine article, and if I knew it by the taste; I am a pretty good judge of "Coca-Cola," having drank it quite a while, and I can come as near telling "Coca-Cola" when I taste it as most any man; however, I can't always distinguish the difference. I have gotten drinks I couldn't tell whether it was "Coca-Cola" or

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not, it was served to me as "Coca-Cola," they told me it was "Coca-Cola." "XQ. 142. You followed, as I understand it, this course: You called on a man and called for 'Coca-Cola'; you went away and a little while later you came back and you called for 'koke'; a little while later you came back and you called for 'dope'; and, usually, when you got the three things you disclosed your identity and fraternized with the man; if he was a friendly man, if he was a 'Coca-Cola' adherent, you fraternized with him and got some information out of him; if he was one of the fellows you thought you caught hands down you got a confession or he begged off, that's about the way you carried on the business?" "A. No, sir, that's not the way, it's about the way, but not exactly." "XQ. 143. Have you anything to add to the answer to my question?" "A. No, sir, but I will answer your questions." Commencing with Florida where I first went and coming on to Mississippi, through Louisiana and Texas, I entered every first class store in each place I went to—a lot of joints that I didn't go into—but I would only call on the first-class places. You say that at Bay St. Louis, for instance, I did not mention the place of Montlezan; yes, sir; I called on him but I didn't mention his name—a good many [594] stores I called on in my investigation that I didn't mention yesterday, quite a number of them, but I did call on him and got an expression from him, too—got a good one. Yes, sir; I made a report on it to headquarters, but I didn't mention it yesterday. You say again to take New

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Orleans, that I didn't mention but four or five places there; I mentioned more than that, but I don't remember the exact number. No, sir; in none of the places I went into anywhere did I ask if they were carrying "Koke," the product of my rival here. Yes, sir; when I interviewed a man I talked about this rival or substitute "Koke," the product of the Southern Koke Co. No, sir; it is not a fact that I disclosed to every man whom I could get into touch with the fact that I was the investigator or representative of the Coca-Cola Company, and that I was out chasing down substitutes, and that I was out for the purpose of stopping this substitution whether by the merchants or the Koke Company—I did not say that to all of these people; I told everybody I could to call "Coca-Cola" by it's right name and to drop the nicknames. "XQ. 163. You deny, do you, that every man that you went to you would impress upon him the fact that the Coca-Cola Company was out for the purpose of catching these rascals who were indulging in these substitutions and who were selling their substitutes for "Coca-Cola"—you deny that?" "A. Every manager of a store that I called on, or every manager of a soda-fountain that I called on, I would talk to him about the product of 'Koke' along with 'Coca-Cola'; I asked him what he thought was meant when people called for 'Koke'." "XQ. 164. I come back to my question which you haven't answered; I say, do you deny that wherever you could possibly get hold of somebody in authority in any store you went into that you talked to them about the

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fact that you were investigating for the Coca-Cola Company this use of a substitute for 'Coca-Cola' and that you would communicate with them in such a shape that they understood that the Coca-Cola Company was out with its lawsuit, prosecuting these people and were going to prosecute anybody that they could possibly get any evidence against—didn't you tell them that?" "A. Whenever I would interview a merchant I would tell him who I was, that I was the representative of the Coca-Cola Company [595] and that a suit was pending between the Coca-Cola Company and the Koke Company and I wanted to know what he thought the people meant and what was his understanding when a man called at his fountain for 'Koke,' what he wanted and they said in every instance that they wanted 'Coca-Cola'." No, sir; I did not tell him that I wanted that evidence for this law suit, not particularly. You ask if I didn't state to them in such way that only an idiot could fail to understand that it was evidence I was searching for for that lawsuit; I don't know whether they were idiots or not, I don't think they were, I think they were all pretty smart business men. Yes, sir; I made it perfectly clear to them that I wanted their information. I made it plain to the majority of them that I would probably want to use their testimony, or rather use my testimony based on their statement. No, sir, I did not make it plain to them that the imitators or substitutors were not only being sued by the Coca-Cola Company, but that they were going to be prosecuted if there was any way to reach

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them criminally and civilly. No, sir; I did not make it plain to every man who was using "Koke" or who was dealing in "Koke" that it was going to be made a very expensive thing for anybody who handled "Koke" along side of "Coca-Cola." No, sir; I did not tell them it was purposed to settle the fate of this question in the court against anybody that handled "Koke"—I never used any language of that kind. You ask what I did say to those people about the prosecution, of those who were handling "Koke"; as a rule the merchant and myself would get in conversation about "Koke" and "Coca-Cola." We would talk about the prospect of the lawsuit and of this kind of matter and I would tell them that "Koke" was a substitute for "Coca-Cola" and we were going to endeavor to get them off the market—I said that. Yes, sir; get the Koke people off the market, and get the product off the market, also. No, I did not also tell them in the serious way I am looking right now, that it was a very serious thing, the substitution of "Koke"—"that thing has got a lot of people into trouble"—I didn't tell them that, may be they understood so, though. You ask if I did not make every man I came in contact with understand that they couldn't sell "Koke" or handle "Koke" as a rival of "Coca-Cola" or as a substitute [596] or in any other way I see fit to put it, without paying the penalty—courts, lawsuits and prosecution; no, sir, I didn't. Yes, sir; I deny that I went over those states and made it, in the interest of the Coca-Cola Company—that they had their investigators out and pro-

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posed to punish any and every man whom they found handling "Coca-Cola" by substituting or handling "Koke" against the nickname of "Coca-Cola"; lots of merchants I talked to I merely asked what they meant when a man called for a "dope" or "koke"; sometimes my conversation would end at that. "XQ. 178. Did you see in the course of your investigation any contracts made by the Coca-Cola Company with those people upon whom you were calling?" (Mr. Crane. "We object to that as being improper cross examination.") "XQ. 179. Did you?" "A. I decline to answer that question." (Mr. ROGERS.—"Go ahead, Mr. Peace, you can answer it.") "A. I didn't see any 'Coca-Cola' contracts." "XQ. 180. Well, why did you decline to answer that question?" "A. Mr. Rogers spoke up and said 'decline to answer that' and I thought he was talking to me." "XQ. 181. You thought you had to obey his instructions?" "A. No, but I would do it." No, sir, it is not a fact that the bulk of these people I called on, and who are these ardent partisans, had contracts with the Coca-Cola Company in which they agreed to handle "Coca-Cola" exclusively and not to handle any other soft drinks at their place. "XQ. 185. Isn't it true, sir, that these people did have contracts to your knowledge with the Coca-Cola Company, whereby, in consideration of handling 'Coca-Cola,' they agreed not to handle any other similar cola drinks?"

(Mr. CRANE.—"We object to that question as wholly immaterial and irrelevant.")

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(Mr. DART.—“That’s already gone down, unless you give him an opportunity to refuse to answer.”)

(Mr. CRANE.—“I am not giving the witness an opportunity to refuse, I am merely availing myself of a legal right which I have, to make an objection to a question which I consider wholly irrelevant and immaterial.”)

“XQ. 186. Will you answer my question?”
“A. No, sir; I didn’t see any contracts. “No, sir, I don’t know that there were any such contracts. [597] No, sir, I was not instructed before I went out, the exact places or drug-stores that had contracts with the Coca-Cola Co. No, sir; I do not know from any source that they have a contract with the Coca-Cola Company whereby they agreed to handle “Coca-Cola” exclusively and not to handle any other similar soft drink. You ask if it is not true that, except for three or four names, or cases, during the course of this examination, that, in my march through the states of Alabama, Mississippi, and Texas, I found nothing but “Coca-Cola” fountains; nearly every place I called on handled “Coca-Cola,” a great many of them did handle “Koke” and told me that they had and did. I called on 209 people in Mississippi, Louisiana and Texas. You ask me how many of these 209, I found that were handling “Koke,” the product of the Southern Koke Company; I don’t know because I wasn’t out looking for people who were handling “Koke,” I was simply out getting expressions from the merchants and their opinion of what people meant when they called for

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“Koke” or “dope.” No, sir; I did not ask these people I talked to whether they handled the product of the Southern Koke Company called “Koke.” So far as I know they knew nothing about it except what they told me, but I never asked them whether they handled it. You ask if I sought an opinion as to “Koke” and “dope” solely from the Coca-Cola people—people whom I found handling “Coca-Cola” and nothing else; no, sir; I called on merchants regardless of what they were handling; it didn’t make any difference to me whether they were handling “Koke” or not. A great many of them I presume were handling “Koke,” but were honest enough to tell me that when a man called for “Koke” he wanted “Coca-Cola” and not “Koke.” You ask me if I can tell you how many people in the 290 people I called on actually handled “Koke,” the product of the Southern Koke Company, to my knowledge; to my certain knowledge I couldn’t say there was any. By confession I don’t know exactly how many, but I knew there was at least sixteen to twenty. You say that I have given the names of those who confessed and whose confessions I saw fit to report, but that I have concealed the names of some who confessed, and did not report them, there were some men who stated they handled “Koke” that I didn’t report. Including those whom I did not report there were some sixteen in all that told me they had handled [598] “Koke,” and did handle “Koke,” You say that, with the exception of those men who actually handled “Koke,” my information

(Deposition of Frederick Conway Peace.)

as to what "Koke" meant was derived purely and solely from "Coca-Cola" sellers; no, sir; that isn't right, a great many men told me that at the time they sold "Koke" the consumer meant "Coca-Cola" because Koke was a cheaper product and they knew it was a substitute. Yes, sir; having gone over the length and breadth of Louisiana, Mississippi and Texas, I have reported the best that I could find on the subject matter—I have reported everything. That's all I was able to find in the course of my journeys over those three states. No, sir; I was not hampered for money, I went commissioned to spare no expense. You ask if I had an unlimited expense account; I sure had. And my testimony represents the sum of my achievement, one man anxious to please, and able to please, and willing to please, and I would have been delighted to find the subject matter for my employers. I was diligent in my work, didn't loaf on them, knew the point of view, and kept right up to it, and gave them the best in my shop, and what I have testified here is all I could find. I cannot say from my own convictions what is the extent of the power and influence in Atlanta, Ga. of the Coca-Cola Co. You ask what is the extent of the power and influence, as it is usually understood, of the Coca-Cola Company; in Atlanta, everybody is very friendly to it. You say that, therefore, it has both influence arising from the friendliness of the entire community and the power which results from such friendship; I don't know how much influence it has, but the people are very friendly to

(Deposition of Frederick Conway Peace.)

them over there. Yes, sir; the same thing is true all along the line; as a rule everybody is friendly to the Coca-Cola Company. You say that as a result of my perambulation over the three states I have produced the names of four people who actually, in the course of their weak lives, substituted "Koke" for "Coca-Cola"; that you would like for me to stir my memory and give you the names of all those in that great list I have made out who at any time in their lives sold "Koke," the product of the Southern Koke Company, as a substitute for "Coca-Cola"—you say I have said generally and vaguely that there might be fifteen or twenty people I found; and you ask if that is right; I will answer, yes, sir. Yes, sir; you correctly understood my testimony to mean that in these three [599] states in which I have journeyed I only actually found four people who actually handled, or would actually handle, "Koke," and only fifteen or twenty who had ever done so at any time in their lives, because I would be the last person in the world to whom they would tell it. You ask if that's the extent of the rivalry I found between the Coca-Cola Company and the Koke Company; I wasn't looking for substitutes this trip, altogether, I was looking out for merchants who handled soft drinks in order to get an expression from them and their opinion of what they meant and what the public meant by the words "dope" and "koke." I wasn't looking for substitution. You say that I raked most of those country towns with a fine tooth comb and that I got everything that was

(Deposition of Frederick Conway Peace.)

respectable or satisfactory above a certain grade; sometimes I went to all the places. In this town (Dallas) I went to all places and in Fort Worth, but in other towns I just went to the first-class places. I tried to get the cream of the entire soft drink trade; I tried to get them all, but I couldn't and so I went to the most respectable places. Yes, sir; East of the Mississippi River, about seventy-five per cent out of a hundred people say "dope," meaning "Coca-Cola" and probably one or two out of a hundred say "koke"; I seldom ever hear the word "koke" over there. When you cross the river and begin to go over in Texas you find that the situation is reversed. About seventy-five or eighty per cent call for "koke" and about one in a hundred calls for "dope." "XQ. 236. Now you have testified how you occasionally stood sometimes as much as a whole day, with a slight interruption, to see the procession of 'Coca-Cola' drinkers expressing their wants and you have stated that in each instance the dispenser would ask of the drinker. 'What do you mean?' and that the drinker would reply, 'I mean Coca-Cola' "; now purely because of the novelty of that question and answer, repeated and answered by hundreds and hundreds of people, I am driven to ask you whether that is all that actually occurred; each dispenser asked that formal question and each drinker gave that formal answer; is that true or is that just simply the language in which you have framed the question and answer at the various places"? "A. The dispensers, whenever a man would call for a 'dope' or

(Deposition of Frederick Conway Peace.)

a 'koke,' they would get from them an expression of what they meant; and the answer was 'Coca-Cola.' "

[600] "XQ. 237. You don't mean, as I understand you, to state that the formal question was put in each instance, "do you want 'Coca-Cola' "? or "do you mean 'Coca-Cola' " or "what do you mean"? "A. He asked the question in the same way." "XQ. 238. He did ask the question 'what do you mean?' " "A. Yes, sir," "XQ. 239. And the answer came, 'Coca-Cola,' you stick to that"? "A. 'Coca-Cola' was the answer, yes, sir." "XQ. 240. Now didn't it happen this way:—a man asked for 'dope,' the dispenser would say 'Coca-Cola'?—yes, sir; or nod his head; is that what generally occurred"? "A. That's the case in some instances, yes, sir." "XQ. 241.—And that pantomime or brief question and pantomime, you translated into the signifying of an opinion, is that right"? "A. That's virtually correct, yes, sir."

Deposition of H. G. McLean, for Plaintiff.

H. G. McLEAN.

Direct Examination by Mr. ROGERS.

I live in Dallas, Texas, where I have lived for the past four years. The first four months I lived here I was clerk in the American Exchange Bank. The next three I was a patient at St. Paul's Sanitarium and on March 10, 1911, I entered the service of the Dallas news in the advertising department as advertising solicitor. I can't recollect the exact dates, but something like twelve or fifteen months ago, I

(Deposition of H. G. McLean.)

called on the Koke Company of Texas to solicit an advertisement. I don't know where it was located, but between Pacific Avenue and some other street I think beyond; I went into the back way, that is to say Pacific Avenue entrance. I met Mr. Van Winkle and at that time it was my intention to solicit him for a card for the jobbers and manufacturers' trade and we discussed advertising for a few minutes and Mr. Van Winkle told me that the Koke Company of Texas was not doing any advertising. He said they couldn't afford to advertise from the fact that they were selling, I believe he said, "Koke"—I don't know if he mentioned the brand or not, it seems to me like it was "Koke," it may have been some other name—but that it was the same formula as "Coca-Cola" and said that the "Coca-Cola people were advertising and it was generally known as "Koke"; that is a large percentage of people would call for "coke," and if the fountains were supplied with "Koke" they could furnish him with this product and sell it or distribute it in that way. I believe that was [601] the main reason. I didn't have any argument to offset that, consequently I never called on him any more. I can't say definitely when this interview was had, but it seems it was twelve or fifteen months ago—it must have been a year ago. It was held in the Koke Company's office in Dallas, Texas.

Cross-examination by Mr. DART.

I believe I would know the gentleman if I were to see him. I think that's the gentleman right over

(Deposition of H. G. McLean.)

there (indicating Mr. Van Winkle). I think there are three brothers of the Van Winkle's—I know there are two, I knew one at the American Exchange Bank and I talked to this Mr. Van Winkle about his brother at the time I was in there, but I think the one at the American Exchange Bank is stouter—well, I think that's the Mr. Van Winkle that I met there (pointing to Mr. Van Winkle). There was nobody present but he and I at the time of this conversation—well, with this exception, the stenographer had gone in the next room I think, before I went in there. I waited for some time for a gentleman, who got up and left and I think a lady stenographer or a bookkeeper or something was in the adjoining room, but I talked to him in the back room—for there were two rooms there, as well as I remember, and I went in the rear because the machinery was in the room that I entered, at least there were some large tanks. No, I made no memorandum of the conversation at that time—I may have, but it wasn't a memorandum that would have been filed because at that time we weren't situated in our office, that is we weren't keeping records of conversations. You ask with whom I have talked the matter over since then; well, I know this much that the reason I can't give the date, quite a long time has elapsed and a short time ago I called on the Coca-Cola Company of Texas, on LaMar Street, and I met a gentleman whose name I don't remember, but I know he was manager of the Coca-Cola Co. I had never called on him before, with the possible

(Deposition of H. G. McLean.)

exception at one time, for a dollar and eighty cents New Year's card. They have a large list of these New Year cards every year in the news, but I was sent there to solicit some advertising for a special series of advertisements to run during the Manufacturers and Jobbers Home-made Products Exposition that was held in Dallas not long ago and he told me he wasn't [602] handling advertisements, that they were doing that from the Home Office and that he had given the Journal a card for this event and had no appropriation for that purpose, but that he was allowed, I think, to spend a small sum, just where they couldn't get to it in time. It never occurred to me that I was doing anything unethical or saying anything that might cause me to have to appear as a witness in the case or anything of that kind, and I just remarked that not long ago I met up with a proposition that was a puzzle to me and I related to them about the Coca-Cola people doing the advertising and I couldn't off-set that talk and I never dreamed that I would ever hear of it again—it was a funny incident to me and I thought they would take it as a joke and then it popped up that they had all this information. I didn't handle any of the advertising, but I think the Coca-Cola people do advertise some in our paper. Yes, sir; I have seen some advertising in the paper—not as much space however, as it seems to me in others. Yes, sir; I feel sure I have related the incident as it occurred—to the best of my memory. If there was anything else said, it wasn't of a nature that would

(Deposition of H. G. McLean.)

impress me. I have never forgotten that conversation because it seemed to me that it was about the first time that I didn't have a comeback. I don't remember having mentioned any other publications of his. No, I don't think Mr. Van Winkle told me that they couldn't afford to advertise in my paper with display advertising and I don't remember that he stated that they were educating the public and reaching the public by other outside avenues; but since you ask me if that was all, I remember something else in the conversation that I had with him, which I didn't relate to the "Coca-Cola" man. My detail of my conversation with Mr. Van Winkle may be a little bit loose and not together, but while I was there in talking of this drink he said something like this: "That this product we have is the same thing as 'Coca-Cola,' the formulas are identical, the man who is at the head of it originated the 'Coca-Cola' business in Atlanta, Ga." Then I think he told me, I think he went into detail and told me, first it was a \$25,000 organization and then it failed and then later this proposition was taken over by some Eastern capital—I am not sure of that, but some one who was able to finance it and [603] that a "go" was made out of it, that it was a success. And I think that he said that the gentleman who started this Koke Company in St. Louis afterwards claimed that he didn't sell them the formula of this drink, but sold them the business' goodwill and that he was manufacturing the same thing and was within the law. Of course, naturally, I insisted that they

(Deposition of H. G. McLean.)

advertise "Koke" and put "Koke" out like "Coca-Cola" or whatever that product was; and in consequence of his refusal to give me any business or considered it, I went away, believing that the Coca-Cola people was making the demand, that they had a way of distributing "Koke" that would take care of their product and I am sincere in the belief that that was the impression he made on me. I believe that covers all of my conversation. You ask if in addition to this conversation that I had with the representative of the Coca-Cola Company I have seen some of the gentlemen engaged in this present litigation; I was informed that two gentlemen were looking for me and I came here—I hadn't seen them until I came to this office, that is to discuss it, or I hadn't been introduced to them. Yes, sir, this address was given me as the address of the two men who wanted to see me. They told me that they wanted to see me at General Crane's office. I didn't know they were holding court here and I came and asked them what they wanted to see me about. I was under the impression that that was it because I was told that Mr. Pierce and Mr. Rogers wanted to see me. It was then that I met them in this office and talked to General Crane. Yes, sir; I told them the same story. They told me they had been informed by the representative of the Coca-Cola Company that I called at their place of business for business and had made this remark and they wanted to know what I knew about it and I think I told them exactly what I have told just now.

Deposition of Cecil V. Rogers, for Plaintiff.

CECIL V. ROGERS.

Direct Examination by Mr. ROGERS.

I am a druggist located at Ervay, Liveoak and Elm Streets—what is known as the Junction building—in Dallas, Texas. I have been in the drug business about eighteen years, but I have been connected with the drug business for about 23 or 24 years, and during all of that [604] time there has always been soda-fountains in my store and in the stores where I worked. I was a soda-water boy for about 14 years. Very often I wait on the trade. When a man is out for lunch I very often drop behind the fountain myself. Yes, sir, I have dispensed at my soda-fountain myself and I have a dispenser at my fountain. You ask me to state whether or not “Coca-Cola” is a popular and frequently called-for beverage at soda-fountains; well, it is considered now one of the most popular drinks we serve; I serve daily, I would say, about five gallons of “Coca-Cola” syrup. I dispense ten to one of anything else, to the best of my knowledge. You ask me to state if I know the expression used by my customers at my soda-fountain, which I understand to be a request for the product of the Coca-Cola Company; well, they come in and call for it—I have had them come in and call for a “dope” or call for a “coke”—they very often, in fact more often, call for a “coke”; they will come in and say “give me a ‘coke,’ ” just abbreviate it. By request for “give me a ‘coke’ ” I understand them to mean “Coca-Cola” and “Coca-

(Deposition of Cecil V. Rogers.)

Cola" is what I furnish in response to such request. I have never had it rejected on the ground that it was not what was asked for. You ask how long I have known people to ask for "Coca-Cola" under the name of "coke"; I think it would be conservative if I said 15 or 16 years, during which period "Coca-Cola" has been supplied in response to requests for "coke." During that period it has never been rejected to my knowledge, as not being what was asked for. Yes, sir, I had a call from a salesman representing the Koke Company of Texas, I suppose it was from the Koke Company of Texas, it was "K-O-K-E." As near as possible I can't say exactly, I think it was in the last two or three years. The salesman wanted to put in "Koke" to be served at the fountain. While he didn't exactly make reference to the fact that it could be served for "Coca-Cola," he made mention of the fact that when people called for "coke" give them "Koke" and when they called for "coke" that they were more than likely to mean they wanted "Koke" than "Coca-Cola"; and mentioned the fact that if I didn't give them "Koke" and did give them "Coca-Cola" that I would be infringing on "Koke" inasmuch as they called for "Koke" and I gave them "Coca-Cola." [605] You ask if I have ever known the name "coke" to be used as a short name for "Coca-Cola" prior to this; oh, yes, it has always been called "coke" as far as I can remember. I have known of the product "Koke" of the Koke Company of Texas not over three years. I was a soda-water boy about 14 years ago at the Palace

(Deposition of Cecil V. Rogers.)

Pharmacy, at which time people very often used the nickname "coke" in asking for "Coca-Cola." I had a gallon of the product "Koke" of the Koke Company of Texas in my store at one time. Yes, sir, at one time there was an experiment made by the Koke Company's salesman. A customer was drinking at the fountain and there was a little experiment made there claiming that the two drinks "Coca-Cola" and "Koke" couldn't be distinguished from each other, that they were so similar. My soda boy there made the experiment at the request of the salesman of the Koke Co. This customer, who was sitting at the counter there says "I bet you I can tell the difference," he says "all right, we will have the boy mix them up and see" and took some out of his bottle and had the boy mix them and made a "Coca-Cola" too and while he turned his back the boy set them on the counter—the boy knew which was which—he set down the one he thought was "Koke" and picked up the one that tasted more like "Coca-Cola" to him so he said, and drank it, but he was right, however.

Cross-examination by Mr. DART.

Yes, sir; I have lived, and had that experience in Dallas. I have been here since about twelve years. No, sir, during that time I have never seen any other similar drink to "Coca-Cola," that was the only experience that I have ever had with any other drink similar to "Coca-Cola." Yes, sir; my establishment is well known as keeping "Coca-Cola," it has always enjoyed that reputation, and my customers are

(Deposition of Cecil V. Rogers.)

“Coca-Cola” customers. I have had them very often make the remark that they would walk two or three blocks out of the way because they knew they were going to get genuine “Coca-Cola.” Of course, I cater to them to keep regular habitues of “Coca-Cola,”—to try to keep a regular trade as regular habitues of “Coca-Cola.” And, with the single exception I have spoken of, I have never handled “Koke.” [606]

Redirect Examination by Mr. ROGERS.

Yes, sir, I am familiar with the appearance of “Coca-Cola” barrels. The color of them is red, I suppose you would call that red. If I were walking down the street and saw in front of a store where there was a soda-fountain, a pile of red barrels and assuming that I was far enough off so that I could not see the labels, I would decide it was a “Coca-Cola” barrel. I am familiar with the color; I have handled quite a number in my time and I have always received it in red barrels and I have never seen it in any other colored barrel.

Recross-examination by Mr. DART.

Yes, sir; I have handled barrels. I have handled them to the extent of having placed them, broken the bungs and stood them on ends. I buy it in large quantities. It comes to me in forty and fifty-gallon barrels. You say that Mr. Rogers asked me something about the use of the word “dope,” and asked if you understood me to say that the words “dope” and “coke” were used frequently; they have called for it under the name “dope,” but that is not as

(Deposition of Cecil V. Rogers.)

frequently as "coke," though. "Coke" is the word they use more frequently than any other name I have known it to go under. Yes, I have talked to my customers about "Coca-Cola." You ask if I ever had any curiosity to find out what they believed was in it that made it so attractive to them; well, I have had a discussion, and discussed it lots of times, and they have wondered what it was that had the exhilarating effect, and why it was they thought it was always a drink that would relieve fatigue. I have had lots of people to come into my store, ladies and men, and take a "Coca-Cola" and claim that it was always relieving fatigue and tired feeling. Well, I can't say that that was originally due to the presence of cocaine in small quantities, I don't know that I ever saw an analysis in it that showed that. I don't know whether that was the general impression or not, but I have heard it said that they thought it contained traces of cocaine. If I get the use of cocaine right, it has an exhilarating effect. It does 'exhilarate your nerves,—it is just the opposite to morphine. I don't know, sometimes it makes them get a relief from trouble, but whiskey will do that too. [607] The first time I ever heard it called "dope" I asked them "what do you mean by 'give me a dope?'" They had some plumbers and electricians right near my store and one of them said "give me a dope." I said "what do you mean?" and he said "Coca-Cola," but I hadn't heard that under that name. I guess that was a little over two years ago. No, I didn't push the inquiry any fur-

(Deposition of Cecil V. Rogers.)

ther to know why they called it "dope." I have never talked to any of my customers as to why they called it "dope." I have never asked them that question. You ask if "dope" has not a rather sinister meaning to the average man; well, I have heard the word "dope" applied to numerous things, where they would say "you can get the proper dope on it," "how it was doped out to me," and dope is applied to drugs of different kinds where they are narcotic or exhilarant or what not.

Deposition of Jacob Schrodtt, for Plaintiff.

JACOB SCHRODT.

Direct Examination by Mr. ROGERS.

I am a druggist located on Elm and Hardwood Streets, in Dallas, Texas. I have been in the drug business about 21 years and during all of that time, with the exception of about five years, I have operated a soda-fountain. Yes, sir; during that time I have been near enough to the fountain off and on continually to hear people ask for drinks and understand the names they use. I work at the fountain quite a good deal myself. I handle "Coca-Cola" and have handled it ever since it was manufactured—that is, as long as I was running a soda-fountain. Yes, sir; it is the most popular drink that we have at the fountain. You ask it when people at our store come in they invariably use the name "Coca-Cola," or if there are other words used to indicate what they want; sometimes they call for a "dope," sometimes some of them ask for "coke," some of

(Deposition of Jacob Schrodt.)

them for "a shot in the arm." Some of them, very few of them, say "Coca-Cola." When a man asks for "dope" or "coke" we usually repeat back to him; "Coca-Cola?" Ever since I have been in the drug business I have gotten in the habit, in fact I try to train all my help, that whenever a customer asks for anything in the store to repeat the name back to them as they understand it and if there is a mistake they catch it before it gets any further and I do the same thing at the soda-fountain. [608] If a man says "give me a dope," I have the boys say, "Coca-Cola?" When he says "give me a dope" or a "coke" we tell them we haven't got it because we don't serve anything else but "Coca-Cola" along that line. No, sir; in response to the question that I have just stated the dispensers ask the customers—those who ask for "dope" and "coke,"—I have never had them say that it was not "Coca-Cola" that was wanted. You ask how long I have known the word "coke" as a short name for "Coca-Cola"—oh, for years; I am not certain how many years it has been. The word "coke" has been used for "Coca-Cola" to say definitely it would be almost impossible; I have known it eighteen years, at least. At my fountain when a man comes in and asks for "dope" or "coke" I understand he means "Coca-Cola." No, sir; I have never had it rejected as not being what was asked for. I am glad to say we have had such a good trade on "Coca-Cola" we don't find it necessary to substitute anything else for it and don't substitute anything else.

(Deposition of Jacob Schrodt.)

Cross-examination by Mr. DART.

Yes, sir; I mean by that that I handle no other similar drink—nothing similar to “Coca-Cola”—and never have. My custom is built up as a “Coca-Cola” custom in that particular line, and of course, I try to keep it and they so understand that I am catering to the “Coca-Cola” taste and custom. You ask if the word “dope” is not a comparatively new word in regard to “Coca-Cola”; well, I can’t say that it is with me. At least five or six or seven years ago, people called it “dope” because some of them had an idea that “Coca-Cola” contained stuff that would make them dopy and even to this day some of them think so—nevertheless, it has been proven that it doesn’t. You ask if I endeavor, by calling back the word, to bring them down to the use of the word “Coca-Cola” as the proper word to use; my endeavor is to find out whether they really mean that or something else—a man might say “give me a dope” and he might mean Dr. Pepper, which I consider is a pretty good dope—that would be a good name for Dr. Pepper—dope,—and I want to make sure that I know what they want; that’s my idea in training my help. [609] If a person comes in and asks for “King’s New Discovery,” I want everybody waiting on him to say “King’s New Discovery?” because he is liable to be mistaken,—for instance, if he said “give me a bottle of castor oil “half the clerks would think he was asking for “castoria”—similar names, you know, and I have seen that same mistake made in other stores, so I think it is pretty

(Deposition of Jacob Schrodtt.)

good training. No, as a result of my training my custom is not getting out of the habit of using the nickname and getting the regular name—that are just as bad as they have always been and if anything, worse, because they know that we know what they want. My regular customers that drink “Coca-Cola” all the time say, “give me a coke,” where they mean “Coca-Cola”; well, I know what they want, and they know that I know it, too. Yes, sir; I think this Dr. Pepper drink is a good dope—it’s dope, alright; if you are to ask me what I think Pepper contains, I can tell you. Yes, sir; Dr. Pepper is a soda fountain beverage and is a syrup like “Coca-Cola” and served at the fountain with carbonated water.

Redirect Examination by Mr. ROGERS.

Yes, sir; I have had purchasers come into my store and ask for “dope” that I was not acquainted with and have had my dispensers ask them what they meant. No, sir; they did not say anything other than “Coca-Cola.” No, sir; I have never heard anybody ask for “Dr. Pepper” under the name of “dope.” If a man who is a perfect stranger to me and who had never been in my store before, were to come in and ask for “coke” I would understand that he meant “Coca-Cola.”

Recross-examination by Mr. DART.

You say that some of these people state that they thought there was dope in it and you ask if I mean dope like the Pepper stuff; well, it’s entirely different from that; when I say dope in the vernacular of the druggist I mean anything that will produce a

(Deposition of Jacob Schrodtt.)

habit, for instance whiskey might be a dope, coffee might be a dope, because it's a habit forming drink, and for that reason when they say dope they might mean something else,—anything that's dopy, we understand it to be, either substituted or added to. If the drink has been added to it has been doped; if I were to make an imitation of anything I would call it dope. [610] No, I don't say that I understood those people were calling for an imitation of "Coca-Cola," I just wanted to make sure what they wanted—if they called for "dope" I wanted to know what they meant or to make sure what they meant. Of course, I don't sell whiskey and things of that kind, and therefore don't know what nicknames they are in the habit of using. I know that drinks are served that are similar to "Coca-Cola" at other fountains—I have drunk some of them, but I have had no experience of my own knowledge to know what the run of customers call them. We don't buy anything that looks like "Coca-Cola" but "Coca-Cola."

Redirect Examination by Mr. ROGERS.

As a result of these inquiries and experiments when they ask for "dope" or "coke" at the soda-fountain they mean "Coca-Cola." No, sir; I don't consider that the name "dope" is a nickname for "Dr. Pepper," but it ought to be—I have no love for "Dr. Pepper," and that's the reason I brought that in; I was at one time accused of substituting on "Dr. Pepper"—had a lawsuit in this town, but I beat the case. I mentioned it first because I had that on my mind, because I can't get rid of that sore-

(Deposition of Jacob Schrodt.)

ness I had at the time, although I really beat the case—I never substituted anything.

Re-recross-examination by Mr. DART.

“Dope” not only means things of that kind, but things that have a tendency to dope you, or to stupify you, or exhilarate you, or anything else that is injurious such as cocaine—“give me a shot of cocaine”—they might mean that if they thought I was selling that so I want to make myself right. Yes, sir; “shot in the arm” is based on either cocaine or morphine, same proposition—that’s a frequent expression, but they do it also jokingly and mean “Coca-Cola” in the long run, because if they didn’t they wouldn’t sit down at the soda-fountain. They certainly would be very much surprised if I were to draw out a needle and give them a shot in the arm. Yes, sir; they use that name interchangeably with cocaine.

Re-re-redirect Examination by Mr. ROGERS.

The people who drink “Coça-Cola” at my fountain are not drug addicts that I know of. [611]

Re-re-recross-examination by Mr. DART.

You ask if “Coca-Cola” is their long suit; I don’t know about that; I don’t advertise that I sell any dope—that is, in the way of morphine and cocaine. In fact, I don’t sell it, and for that reason I don’t have that class of people hanging around.

Deposition of Charles R. Smith, for Plaintiff.

CHARLES R. SMITH.

Direct Examination by Mr. CRANE.

I am a druggist and have been in the drug business for about 15 years, during which period I have been dealing in soft drinks, as well as ordinary drugs and have been handling "Coca-Cola" during all of that period, selling it at the soda-fountain. Yes, sir, I know by what names my customers have been calling for it. They have different names for it. A fellow will call it "coke," "dope," some fellows come in and say "give me a shot in the arm." Well, of course, when they ask for it by those names I would naturally think they wanted "Coca-Cola" and have always served them "Coca-Cola." No, sir, I have never made any inquiries as to what they wanted or had my dispensers asked them; I just served the "Coca-Cola." Recently there has been such a drink as "Koke" manufactured by the Koke Company of Texas. You ask how long since; well, I think that two or three years ago, probably. No, sir; I did not know of any drink manufactured and sold under the trade name of "Dope." Yes, sir; "Coca-Cola" was known to my customers and called for by them as "coke" and had been before I ever knew of the existence of any product known as "Koke" or "Dope." Yes, sir; I am doing business in Dallas now on Main Street. Yes, sir; within the last two or three years a salesman representing the Koke Company made an effort to sell me "Koke"

(Deposition of Charles R. Smith.)

—"K-O-K-E" instead of "Coca-Cola." At first they wanted me, you know, to take stock in the company and sell their "Koke" as they called it. Yes, sir; they would make me a price on the syrup, and then, after using so much of their product, I was to have so much stock in the Koke Company. **And** then they made the argument that they couldn't tell the difference between "Koke" and "Coca-Cola" and would make me a saving in using their product, "Koke"—it would cost less than "Coca-Cola." They said if people came in and asked for "Koke" just to give it to them. [612] Yes, sir; I was recognizing all this time that "Coca-Cola" was being called for as "coke."

Cross-examination by Mr. DART.

No, sir; I have not been in business for myself 15 years. I have only been in business for myself three years, all of which time was, however, in Dallas. Prior to that time my experience was in somebody else's employ as manager of a drug-store. You say you imagine that I have handled nothing but "Coca-Cola," and no rivals; I have sold it when I was manager for the Rogers Drug Store, but not since I have been in business for myself. Yes, sir; my store is recognized as a "Coca-Cola" store; I mean by that that I handle "Coca-Cola" to the exclusion of other similar drinks. Yes, sir; my custom has been built up as a "Coca-Cola" custom, and, of course, I cater to it with the idea of keeping it and, since I have been in business for myself, I have learned that there was a company handling "Koke" as an

(Deposition of Charles R. Smith.)

independent product. I think that has been on the market though, about three years, and I think maybe it was manufactured before they moved to Dallas, but it came to my personal knowledge only after they opened their office here. I know they have an office in Dallas and have had for about three years, but I declined to veer from "Coca-Cola" and never have handled that drink.

Deposition of J. W. Arrant, for Plaintiff.

J. W. ARRANT.

Direct Examination by General CRANE.

My brother and I have charge of the Southland drug-store soda-fountain in the Southland Hotel, Dallas, Texas. We have had this fountain about two years and three or four months. Altogether I have been a dispenser of soft drinks for a little over eight years, during which time I have dispensed "Coca-Cola." Yes, sir; I am familiar with the names which customers apply to "Coca-Cola" in asking for it. They call for it under the names of "coke," "dope," "shot"—mostly ask for "coke" when they come up to the fountain. When they do so I ask them what they mean and they say "Coca-Cola." When I first began dispensing soda water I did not ask them what they meant, but within the last few years I have been doing so. Something like a month ago I put on a dispenser's test at the request of a representative [613] of the Coca-Cola Company. That test continued something like a day and a half or two days. About ninety per cent of

(Deposition of J. W. Arrant.)

the people called for "coke." I would ask them, "What do you mean when you say 'coke'?" They would say, "Coca-Cola." Not one of them answered that question differently. No, sir; not one of them stated that he wanted the product manufactured by the Southern Koke Company, or any other Koke Company, known as "K-O-K-E." No, sir; I have never dispensed "Koke" in my life. No, sir; my regular customers in calling for "coke" didn't have any knowledge or information so far as I know, that I had ever dealt in "Koke." I had never dealt in "Koke" in my life, but I have been at fountains where they did sell it. Yes, sir; I have been at soda fountains where they did sell it—but I never did dispense it—I happened to be lucky. The Southland Hotel drug-store is the only soda-fountain in which I have worked in Dallas. Formerly, I worked in St. Louis.

Cross-examination by Mr. DART.

I said I had never worked in any place where they dispensed "Koke." I said I was lucky in not having run into those places. Yes, sir; I have always handled "Coca-Cola" and not handled any "Koke." Yes, sir; we have the reputation of being the largest dispensers of "Coca-Cola" in Dallas, and we handle large quantities of it. We make that a specialty, and, since we cater to it, we want that custom and we certainly do keep it. You ask if we have not a great many rivals who would like to get it away from us; why I don't know. Our customers, of course, are "Coca-Cola" customers—they come there because

(Deposition of J. W. Arrant.)

they know they can get "Coca-Cola" there. We have them come from all over Dallas—from Sanger's and all over the town. Yes, sir; these people I was asking the question of the other day thought I was putting up a joke on them; or they would ask "what are you trying to do?" and I said "There has been a drink made here in Dallas called "Koke" and they want to know if you want 'Koke' or 'Coca-Cola.' " They said "hell, no, we want 'Coca-Cola,' " and these are customers of ours from all over town—men that I knew. Yes, sir; we also carry signs advertising that we carry real "Coca-Cola"—to ask for "Coca-Cola" by it's right name. Yes, sir; we carry signs advertising that "we sell the [614] real 'Coca-Cola.' " Everybody in Dallas knows they can't get anything else but "Coca-Cola" from me. No soft drinks similar to that are carried; no cola drinks—what you call cola drinks.

Redirect Examination by General CRANE.

You say the General asked me the question "substitutes" and that you asked the question "rivals"; and you ask if I know that there are drinks on the market that call themselves rivals and don't call themselves substitutes; well, there's substitutes. That is, people like me who handle "Coca-Cola" call it substitutes, but I don't know what people out in the world call it.

Re-redirect Examination by General CRANE.

In order to relieve the difficulty I will state that some of the other drinks I carry are drinks such as orange phosphates, lemon, cherry, root-beer, grape-

(Deposition of J. W. Arrant.)

juice—Welch's, Armour's, and Red Wing, are leaders—lemonades and all flavors you might say that you could name.

Re-recross-examination by Mr. DART.

Those are none of them either rivals or substitutes for "Coca-Cola." They are not even rivals—that is to say, they have not the same taste nor the same color nor are they drunk for the same purpose. You ask if a man who drinks "Coca-Cola" steadily does so because of the exhilarating or joyous effect it has on him, and if he becomes a habitue; I couldn't say that drinking "Coca-Cola" causes them to become a fiend of it, anything like that. You say, to illustrate, that I don't find any men coming to my place steadily month in and month out, asking for limeade, for instance; yes, sir; we have "Coca-Cola" customers come two or three times a day and drink limeades and lemonades. They mix their drinks. On the other hand we have a steady line of customers who drink "Coca-Cola" steadily—more than any other kind of drinks. That's the custom of the drinking customers—drinking "Coca-Cola" but will occasionally take a limeade. As a rule my customers are "Coca-Cola" drinkers and are so recognized by me—they come there, get the good stuff, I serve it to them, and they come there daily. [615] I, as a caterer, know there is a very vivid distinction between anything like limeade and "Coca-Cola" and so do my customers.

Deposition of A. M. Timms, for Plaintiff.

A. M. TIMMS.

Direct Examination by Mr. ROGERS.

I am soda-man at the Owl Drug Store, Dallas, Texas. I have been a soda-water man something like ten or twelve years. Before I went to the Owl Drug Store I was across the street, at Smith's Pharmacy—worked for Moss a while and then went to the Owl Drug Store. I have not worked at any other places, in Dallas. Before that I worked in New Orleans quite a while for De Lopez, William's Pharmacy and Brinkley part of the time, and then worked in North Louisiana, as drug clerk and dispenser for C. Q. Perkins. My work has been back of the soda-fount, and drug clerk, too. I have charge of the soda-fountain where I now am. I occupied a similar position during my work as a druggist. Sure, we dispense "Coca-Cola." You ask if it is a popular drink—in demand; it is one of the most popular drinks. We have had people ask for it different ways, some ask for "coke" you know, some "Coca-Cola," some would ask for "dope," you know. When a man asks for "coke" or "dope" I understand that he means "Cola-Cola"; I generally ask him "Coca-Cola?" and he says, yes. I have been asking people that question ever since the last couple of weeks. A man asked me to put that test on and I have been doing so ever since. Before that I just gave them "Coca-Cola." I have never had "Coca-Cola" rejected as not what was

(Deposition of A. M. Timms.)

asked for. I have known the name "coke" to be used as a nickname for "Coca-Cola" ever since I have been working in the business. In other words, about ten or twelve years, something like that. They asked for "coke," "needle" and all like that, I didn't pay much attention to it. When a person uses these expressions I ask him and he says "Coca-Cola" every time. You ask if I understand that "coke" and "Coca-Cola" are equivalent and mean the same thing; well, when they ask for "coke" they always mean "Coca-Cola," that's what they mean.

Cross-examination by Mr. DART.

You ask if, when a man asks for "needle" I give him "Coca-Cola"; no, I say "Coca-Cola?" he says, "Yes." [616] I do that now in Dallas, but I never did in the small towns, because I knew everybody there and knew their habits. Over here I always ask them what they want. When they sit at the tables, of course, I don't get a chance. Lots of times boys sitting at the tables say three "cokes." Of course, I haven't got time to get there and change it. These pet names, "coke," and "dope," and all such names, all mean "Coca-Cola." Yes, sir; I have handled sarsaparilla and root beer—all syrups—lots of people drink "Coca-Cola" mixed with orange, some with lemon and like that. When they want to mix a drink they call for "Coca-Cola" and lime, "Coca-Cola" and orange, and so on. Yes, sir, they only call it "Coca-Cola" when they have a fit of absent-mindedness. They usually ask for it as "coke" or "dope." I always ask them and they say "Coca-

(Deposition of A. M. Timms.)

Cola" all the time. I don't handle anything else but "Coca-Cola." I don't handle anything of that class, any rival drinks, cola drinks.

Deposition of James F. Rogers, for Plaintiff.

JAMES F. ROGERS.

Direct Examination by General CRANE.

I am in the drug business at the Southland Hotel, in this city, where I have been for seven years. I have been connected with the drug business altogether about fifteen years, during which time I have been a dealer in "Coca-Cola" and have been dispensing it at soda-fountains. My observation has been during the fifteen years I have been in business, that "Coca-Cola" is called for under the names "coke," "dope" and "shot"—I believe those are the most frequent names—"coke" however, is the most frequently called for; it is called for by fifty per cent of our customers now; they call it "coke" meaning "Coca-Cola." Yes, sir, I feel that as a druggist I can tell pretty well a "dope fiend,"—one addicted to the use of opium, morphine or some other of its basis, when they come into my store. No, sir, when these people come to the soda-fountain they are not of that class; those who buy soft drinks from me are usually normal customers. You say that I have no suspicion when they call for "dope" or "coke" that they want any morphine or cocaine or preparations of any kind; we know just the opposite, we are sure that they want "Coca-Cola." [617] I believe fifty per cent of our customers call it

(Deposition of James F. Rogers.)

“coke.” I have never had a case yet where they have ever rejected “Coca-Cola.” Yes, sir, there are display advertisements of “Coca-Cola” in our establishment. No, sir, we have no display of advertisements of “Koke” in our establishment. There is nothing in our store to tell people that we are dealing in “Koke” and not “Coca-Cola.”

Cross-examination by Mr. DART.

No, sir; I don't serve the drinks myself. I never have. I have always had somebody to serve them for me. I am a druggist and attend to the drug end of my business, look after the finances of the business. No, sir; I am not a practical druggist, I am a merchant druggist. Yes, sir; I have a knowledge of drugs, as drugs. I have a very thorough knowledge of the drug sundries department and a slight knowledge of chemicals or what they call the pharmaceuticals. I have never served behind the soda-fountain, I have never dispensed soda water. Yes, sir; Arrant, who was on the stand here, worked for me, and another man, I have two of them. Yes, sir; I have come in contact with the customers asking for “Coca-Cola” standing at the counter, not all day, but I am right close many times, standing close to the counter and at the cashier's department, which is several feet from the soda-fountain. What I hear is the accidental calls for drinks, I don't hear every drink called for, and I have besides a very busy establishment. Yes, sir; I know from the financial side that I have a very large “Coca-Cola” business.

(Deposition of James F. Rogers.)

In our fountains we specialize on that to a certain extent. Well, we don't consider it specializing exactly, but the enormous business makes us carry a large supply of it—we get it in barrel lots. We don't particularly cater to any particular drinks, but "Coca-Cola" has been our big sale. No, sir, we haven't carried any of the other rival cola drinks,—those who claim to be in the same field as "Coca-Cola"; we don't handle anything else, not since I have been directly interested in the business.

Deposition of R. L. Asbell, for Plaintiff.

R. L. ASBELL.

Direct Examination by Mr. ROGERS.

I am 26 years old; am a soda dispenser for Cecil Rogers [618] Drug Store here in Dallas. Before that I worked at Dimitri Ninich and before that at Britton's Drug Store. Before I came to Dallas, I worked in Atlanta at Brown & Allen's and Cone's. Brown & Allen's is a large store. At all of these various places I have worked back of the soda-fountain. Yes, sir; I came in contact with people asking for drinks at the soda-fountain and I know the names that they use to designate what they want. Yes, sir, I dispense "Coca-Cola" and always have since I have been in the business. Yes, it is a very popular beverage. At the various places that I have operated, people say, to indicate to me that they mean "Coca-Cola," they will ask for "dope" and some places they call it "coke." In Dallas the most common name is "coke." In response to a request

(Deposition of R. L. Asbell.)

for "coke" I furnish "Coca-Cola." I generally ask the question, does he want "Koke" or "Coca-Cola," he would smile and say he wanted "Coca-Cola." I have been asking that question the last five or six weeks. Before that I never asked such questions, but just furnished, in response to such requests, "Coca-Cola." No, sir; I have never had it rejected as not what was asked for. In Atlanta, my experience was that the name used over there was "dope." No, sir; I did not hear people in Atlanta ask for "coke." When a person asked for "dope" in Atlanta I understood he meant "Coca-Cola" and furnished "Coca-Cola." No, sir; I never had it rejected as not what was asked for. Yes, sir; I do regard the names "coke" and "dope" as commonly used nicknames for "Coca-Cola."

Cross-examination by Mr. DART.

You ask if they call it "dope" in Atlanta; well, I don't know, I noticed that all over, not only in Atlanta, but in Atlanta and all around—in fact, west of the Mississippi River. No, sir; I never did ask anybody why they call it "dope." You ask if I have any idea of my own why they call it "dope"; why, I have got an idea that they want "Coca-Cola," that's my idea, that's all I have, no other idea. No, sir; I have never analyzed the thing at all to find out why it was called "dope" at one place and "coke" at another. No, sir; I did not also say they called it "shot," I have heard that once or twice here, I have heard them ask for "a shot." No, sir; at [619]

(Deposition of R. L. Asbell.)

no time in my life did this renaming or nicknaming of this drink ever make me stop to think why they did it. It never gave me any occasion for reflection. I would figure it this way, you go in the saloon and ask for a bottle of Budweiser, you call for a bottle of "Bud," but if I ask for a bottle of beer a man would ask me what kind I wanted. With me, when they come in and ask for something I ask what they want. I am now at Cecil Roger's. Mr. Roger testified that he doesn't carry anything except "Coca-Cola."

Redirect Examination by Mr. ROGERS.

My purpose in starting about six weeks ago to asking people when they came in and asked for "coke" what they mean, was that I wanted to find out. No, I did not have any doubt about it. Yes, sir, I did it at the request of some one. In every case, when any one asked for "coke" and I asked the question "what do you mean?" the answer was, "Coca-Cola." I never had it refused or rejected. If they asked for "coke" I asked did they want "Coca-Cola" and they would smile and say, "yes."

Recross-examination by Mr. DART.

I said I started the inquiry at the suggestion of some one. I can't think of his name but he represents the Coca-Cola Co. You ask me to turn around here and see if I can see him; no, sir, it was somebody else. I can describe him, he was with this fellow here (pointing to Mr. Peace) the other fellow was a black-headed fellow, clean shaven. I don't

(Deposition of R. L. Asbell.)

know his name, but I know him when I see him.

“XQ. 11. I would like for him to take a look at Mr. Friend and let him see if he was not the man.”

(Mr. Friend was thereupon brought into the room and after the witness had looked at him, counsel continued with the question.) “Yes, sir; it was he.”

Mr. Peace was with Mr. Friend and it was at his suggestion that I started to find out what people meant. That was about five weeks ago. I was in Atlanta, Christmas, two years. It is my home. Oh, no, that is not the first time I worked there, I worked in Atlanta two and a half years ago. [620]

Deposition of Dexter H. Hardin, for Plaintiff.

DEXTER H. HARDIN.

Direct Examination by General CRANE.

I am dispenser part of the time and part of the time front man in the Owl Drug Company, Dallas, Texas, located at Commercial and Ervay Streets. I have been in the employ of that concern since the first of February of this year. I have been in the employ of that and other drug-stores off and on about seven years. I have handled “Coca-Cola” for about the same length of time. Our customers call for “Coca-Cola” under the names “Coca-Cola,” “dope,” “coke,” “shot.” I first remember hearing them about four years ago. Yes, sir, I have recently made tests or had tests made of what our customers mean by the names “coke” or “dope,” for which they called at our fountain. A test was made between two and three weeks ago at the request of Mr.

(Deposition of Dexter H. Hardin.)

Peace. The result of that test was that about a third of the customers called for it under the name of "coke." Whenever they called for "coke" or "dope" I asked if they wanted "Coca-Cola" or "Koke" and the reply was "Coca-Cola." No, sir; there was no instance in which they did not want "Coca-Cola" but wanted "Koke." That test continued for about two hours. I think there were about a hundred people come in during that time and about thirty-five of them called for "coke." Yes, sir; I asked each of those thirty-five what he meant by "coke" and his answer was "Coca-Cola." During the period before that test was made, I estimate that about a third of our customers called for "Coca-Cola" as "coke"—in the past few years, I would say. Since I have been with the Owl Drug Company I would say that about thirty-five per cent of them call for "Coca-Cola" by the name of "coke."

Cross-examination by Mr. DART.

When I first had a man to ask for "dope" I didn't know what he wanted and the same with "coke" and the same with "shot." I had to ask them what they meant. I did not know what they meant.

Deposition of S. Y. Athoff, for Plaintiff.

S. Y. ATHOFF.

Direct Examination by Mr. ROGERS. [621]

I am thirty years old and am manager of the Owl Drug Store, corner of Commerce and Ervay Streets, Dallas, Texas. I have been in the drug business for thirteen years, during all of which time I have oper-

(Deposition of S. Y. Athoff.)

ated a soda-fountain. I am not concerned with the dispensing of soda water personally, but my duties are all over the store and I see and hear everything that goes on. Yes, sir; we dispense "Coca-Cola" at our fountain and have done so all the time I have been in business. Yes, sir; it is a popular drink, in demand, and has been extensively advertised. Yes, sir; I know how purchasers of "Coca-Cola" indicate that they want "Coca-Cola." The name "Coca-Cola" is not invariably used; it is quite frequently shortened into "coke" or other words used, such as "dope" or "shot." When a man comes into our store and asks for either "coke" or "dope" or "shot" I understand that he means "Coca-Cola." Yes, sir; these terms are familiarly used nicknames for "Coca-Cola." In response to requests for "dope," "coke" or "shot" we give "Coca-Cola." We have never had it rejected as not being what was asked for. I have heard the words "coke" and "dope" since I have been in Dallas, that is, about six years. During all of that period a request for "coke" has been understood by me to mean "Coca-Cola."

Cross-examination by Mr. DART.

The same applies to the use of the word "dope." You ask if I have ever thought of what the word "dope" means in regard to that; well, the word "dope" may mean to some people a narcotic or sedative or drug, but I don't think it has any connection with the drink. I have inquired, in a limited way, of many people whom I know just in a friendly sort

(Deposition of S. Y. Athoff.)

of way, when they come and ask for “dope” or “coke” I tell them we don’t keep that, we keep “Coca-Cola”—that’s merely in jest but they mean “Coca-Cola.” I have never gone into their minds to find out how or why they call it “dope” but we generally know it is a nickname for “Coca-Cola.” Yes, sir; they might as well call it “Choka-Choka.” We have had people ask for it as “rope” too. There are a variety of names used to indicate the drink. [622] Yes, sir, I am a druggist and, of course, I know what “dope” means as a druggist. “Dope” would mean a pharmaceutical drug, a habit-forming drug, such as morphine, cocaine, heroin. “Shot” is used—supposed to be a shot of cocaine or morphine in the arm. Yes, sir, I have heard these people call “Coca-Cola” “a shot” for short. I have been here in Dallas about seven years. I came from Philadelphia and was also a druggist up there. I first heard these names I speak about in Dallas; we don’t use very much “Coca-Cola” up there in Philadelphia, not as much of it as we do here. You say you suppose I didn’t know what they were talking about when I got the first request for “coke” or “dope”; I never got the first request, because I was not working behind the fountain. No, sir; I can’t fix the time when I first heard those expressions, but it was in the last five or six or seven years. I can’t say definitely just when I did commence to hear those nicknames. When I got the first nickname I had to inquire what it meant because I wasn’t familiar with the amount of “Coca-Cola” sold down here—the

(Deposition of S. Y. Athoff.)

amount that was drunk—nor was I familiar with the terms. We are not selling any drink of the same nature as “Coca-Cola” at the Owl Drug Co. We handle “Coca-Cola” exclusively, with the exception of lemon-cola, which is an entirely different drink. Yes, sir; our customers are “Coca-Cola” customers. They come to us because they know we sell it. It is our boast, our brag, that we dispense pure “Coca-Cola” and nothing but pure “Coca-Cola.” No, sir, we do not also boast or brag that we dispense the only pure “Coca-Cola” in town. Lemon-cola is colored similar to “Coca-Cola.” I am sorry, but I can’t tell you where it is put up. I don’t know where it comes from. Yes, sir; we sell that in our fountain—I don’t know about selling it—we have a bottle of it now but it is very, very rare that it is called for. I have never tasted it myself and don’t know how it differs, if at all, from “Coca-Cola.”

Redirect Examination by Mr. ROGERS.

You say that I was asked a moment ago about the meaning of the word “dope” as a druggist and then you ask what I understand the word to mean as a soda dispenser; if I were at the soda-fountain I would understand the word to mean “Coca-Cola.”

[623]

Deposition of O. M. Brown, for Plaintiff.

O. M. BROWN.

Direct Examination by General CRANE.

I am drug clerk and have charge of the soda-fountain at the Owl Drug Store in the Oriental Hotel,

(Deposition of O. M. Brown.)

Dallas, Texas. With the exception of one year, I have been there nine years. In dispensing "Coca-Cola" it has been called for during the period I have been selling it by those who use it under the names "coke" and "dope," "shot in the arm" and "Coca-Cola." I have been observing the name "coke" applied to it ever since I began noticing it, say five or six years ago. About three weeks ago at the request of the "Coca-Cola" representative, Mr. Peace, I put on a test at the Oriental Drug Store, of our customers coming in. "Q. 14. Well, now, what proportion of these people that called for 'coke' during the time that test continued wanted 'Coca-Cola'—that called for 'coke'?" "A. Well, half of them, anyway." Yes, sir; I would ask them what they meant and their answer would be "Coca-Cola." That test continued all the afternoon until I went off duty. No, sir; we have never handled "Koke" at the Oriental Drug Store. Yes, sir; a representative of the Koke Company sought to have our people handle it. He said it was cheaper and said there was no difference in it and "Coca-Cola," but I tasted it and told him that there was a difference and I believe any one could detect the difference. I couldn't tell you exactly when those statements were made, it was some time ago. It has been at least three years ago.

Cross-examination by Mr. DART.

No, sir; we don't handle any other rival drink of "Coca-Cola"—that is any drink of the same general kind.

Deposition of T. Q. Martin, for Plaintiff.**T. Q. MARTIN.**

Direct Examination by Mr. ROGERS.

I am a druggist and am proprietor of the Owl Drug Store, Dallas, Texas, in which I operate a soda-fountain. I have operated a soda-fountain for two years. That is as long as I have been in the store, but the store itself has been there for six years. Yes, sir; I recollect a salesman of the Koke Company, of Dallas, calling on me. His name was Green. He came and asked me to sell "Koke" [624] and said it was just as good as "Coca-Cola," from the fact that it was being manufactured at Dallas, and, as a patriotic citizen, I should sell it, and that I wouldn't be deceiving the customers because a man should get what he called for,—if he called for "Koke" that we should have the "Koke" to give him. Well, I differed with him, I told him that people called for "coke"—called it as a nickname for "Coca-Cola,"—and I told him that was a nickname that people generally applied to "Coca-Cola," that I had myself observed "Coca-Cola" around the fountains, that they would say, "give me a glass of 'coke.'" No, sir; I did not purchase any of this "Koke" syrup from Mr. Green. You ask if anything was said by him that his product was anything like "Coca-Cola"; yes, sir, my impression is he said it was the same thing, as the man who originated the formula, had at one time worked for the Coca-Cola people.

Deposition of E. B. Thomas, for Plaintiff.**E. B. THOMAS.**

Direct Examination by General CRANE.

I am in the confectionery business, doing business under the name of Dallas Confectionery, located at 1508 Elm, and 1605 North Main Streets, Dallas, Texas. I have been in the confectionery business in Dallas, Texas, five years in January. I was in the same business for thirteen months in Bonham, Texas, and before that when I was a boy I was in the same business in a small town. Yes, sir, I have handled "Coca-Cola" while I was in the confectionery business, but I don't remember whether I handled it during all of the period of time that I have been engaged in that business. When I was quite small, I had a fountain in my father's grocery store and I don't believe the first year I handled "Coca-Cola," but I think I bought some the second year. I have handled and dispensed "Coca-Cola" over the fountain about eight years. During this period my customers had been calling at the fountain for "Coca-Cola" under at least somewhere in the neighborhood of a dozen names, I should judge. They called for "dope" and called for "coke" and they called for "dry-town eye-opener" and they called for a "shot"—things like that. [625] Yes, sir, they called for "Coca-Cola," also. They called for it as "coke" frequently, as much as they did "Coca-Cola," if not more. I couldn't say as to how long they had been calling for it as "coke," it seems to

(Deposition of E. B. Thomas.)

me it has been as far back nearly as I can remember—a good little bit, nicknaming it “koke,”—seems like the same way as going into a saloon and saying “give me a bottle of Bud”; as far back as I can remember they would say “give me a bottle of Bud” for Budweiser. The people to whom I offered “Coca-Cola” when they called for it as “koke” have never rejected it to my knowledge. You ask if I handle “Koke”; I think they sent me some two or three times in a gallon jug, that’s the largest quantity I ever got at one time, was in a gallon jug. Some time ago, but not recently, a representative of the Koke Company tried to induce us to use the “Koke.” My best recollection is that it has been over a year, maybe a year and a half ago. The argument he used was that I could make more money out of it than I could “Coca-Cola.” Yes, sir, sell it to me cheaper, make me a better proposition. You ask if they said anything about its resemblance to “Coca-Cola”—being similar or the same as it; to my best recollection, yes; they said it was practically the same thing as “Coca-Cola.” You ask if they made any threats against me unless I sold “Koke”; the best I remember on that, they said that when they called for “Koke” that they were going to make us give them “Koke,” and if they called for “Coca-Cola” give them “Coca-Cola.” That’s my best recollection of it. I think the gentleman I was talking to is this gentleman here (pointing to Mr. Boyd)—I couldn’t say as to whether or not he was connected with the Company in an official way. My

(Deposition of E. B. Thomas.)

recollection is he was manager, but whether he said that or not I won't say, that's the idea I have now—that he was connected with the company; whether or not he was manager or president, I wouldn't say. You ask if they told me anything about being able to sell this “Koke” as “Coca-Cola,” and if it was discussed as to whether my customers would be able to tell the difference between “Coca-Cola” and “Koke”; my best recollection on that is that the argument put up was that we had more calls [626] for “Koke” than we did “Coca-Cola,” or something to that effect, and we could sell them as easy as to dispense the other when they called for “coke.” You tell me not to answer your question until I grasp what you mean, and you ask if anything was said as to whether or not my customers would be able to tell the difference; well, I don't know exactly on that, but my best recollection on that is that there would be no one that would make any kick on it at all, if they called for “coke” and we gave them “Koke,”—there would be no kick on it, that it was a first-class article, and that I could sell it as good as I could “Coca-Cola.”

Cross-examination by Mr. DART.

I couldn't say whether this man I pointed to is named Boyd or Brown. I remember his face. He visited me in a business way trying to get me to carry the syrup of the Koke Company—I suppose that was what he was there for. Yes, sir; he told me that “Koke” was an article which had its own name properly protected and he told me when I

(Deposition of E. B. Thomas.)

served "Coca-Cola" on calls for "Koke" I was doing wrong and that I ought to serve his goods when they called for it. I believe he did say that he could make me do it in law, I won't be certain about it, because I have had other people say that he did say that to me—whether my talking to someone else gave me that idea, or whether he said it, I don't remember. You ask who I talked to about it; well, different business men. You ask if this man Peace of the Coca-Cola Company had said anything to me about it recently; I don't know, I don't remember the name, there has been several "Coca-Cola" men in my place; I can tell them by the faces but I forget the name. Yes, sir; I know this gentleman (pointing out Mr. Peace), he called on me lately. No, sir; he was not one of the ones that told me the story—I don't think I have talked any about that in the last year. They found out about a year and a half ago that I didn't handle their goods and they haven't bothered me in the last year and a half. Oh, yes; Mr. Peace talked this matter over with me. I don't remember now as to what he said. He asked me about different people calling for "coke" and "Coca-Cola," what per cent of them called for "coke" and [627] what per cent called for "Coca-Cola" and what per cent of those who called for "coke" wanted "Coca-Cola." I don't know as I told him all of what I have been telling you, but I told him part of it. No, sir; he did not take down what I told him and read it back to me, not that I remember of. He asked some of my dispensers

(Deposition of E. B. Thomas.)

if, when a customer came in and asked for "coke," they believed in their mind that they wanted "Coca-Cola" and after he got what the dispenser said he came over and read the name of each one and asked me was that correct—the name and what they said; that's the only thing I remember him taking down and reading. Yes, I did talk to him about these people coming to me and trying to get me to take "Koke" and sell "Koke"; he asked me something like what I have said. That was either the first of last month or the last of the month before. I told him something like what I have just told you, or less. I believe I have told more under the cross-examination than I did in that first talk to him; I am not sure about that, possibly he was in my store at different times and something was said about this each time he was in. I told him these people were in and tried to get me to carry "Koke." I don't know that I told him what you have already gone over with me—that they had the name, had it registered and that it was our duty not to sell—I don't know that I told him that like I told it to General Crane. I told General Crane that in his office just now when I was talking to him. Yes, sir; I was talking to one of these gentlemen in the other office just now, but I did not tell them that then, they didn't ask me that question then; no, sir, neither one of them asked me about that then. You ask if I ever, as a matter of fact, sold "Koke"; I think at one time they sent me down a gallon of "Koke." I put it in the pump, I believe I told the dispensers

(Deposition of E. B. Thomas.)

to try it—a few of them that asked for “Koke” were given it and one of the dispensers came to me a few days later—I don’t know how many days it was, and said to me “you can’t get by with that stuff, Mr. Thomas.” I said, “take it out of the pump.” No, sir; the people don’t want it. With that exception I have never handled “Koke,” but I have handled “Coca-Cola” steadily and have been in business in Dallas five years. [628] No, sir, I am not a druggist, I have got confectionery and candies and carry pastry and soda-water drinks. No, sir, I carry no other drinks of the kind of “Coca-Cola” other than “Coca-Cola.”

Deposition of T. C. Lupton, for Plaintiff.

T. C. LUPTON.

Direct Examination by General CRANE.

I am manager of the Coca-Cola Bottling Works in Dallas, Texas, which position I have held for four or five years the fourth of next month. Yes, sir, as manager of the Coca-Cola Bottling Works we sell a bottled product known as “Coca-Cola,” which is manufactured by the Coca-Cola Bottling Company—they do the bottling—it is manufactured by the Coca-Cola Company. We get orders for it by mail and by long distance at times, but principally it is supposed to be by mail as people don’t care to pay a long distance call. In the city of Dallas the wagons deliver it. We have solicitors to go around and sell it on the wagons and we have telephones and we have our salesmen in town. I am familiar

(Deposition of T. C. Lupton.)

with the bundle of orders addressed to the Coca-Cola Bottling Company of Dallas, Texas, which is now exhibited to me and those orders are signed by people who were making orders. In all of them the commodity ordered by my customers here is denominated "coke." I have examined that bundle of papers and I have seen them before. They are orders by the different people whose names are signed. These people were customers of ours at the date when the respective orders were made. They had been customers since we started in business, about fifteen years ago. We have never sold them any commodity other than "Coca-Cola." They called the commodity which they were ordering "coke." The "Coca-Cola" that we sold them and delivered to them was not labeled "Koke" but was labeled "Coca-Cola." No, sir, nothing else than "Coca-Cola" and the crowns on the bottles were labeled "Coca-Cola" and nothing else. This stuff was received at my office, the Coca-Cola Bottling Works; yes, sir, I received them myself personally. I read every order that comes into my place of business. [629] These are papers that came through my office in Dallas and were received by me in Dallas. I am manager, I am a stockholder and I am employed there. When these customers ordered "coke" they got "Coca-Cola." There were not any objections made by any of them. I identify that bundle of orders as the ones that came to me through the United States mail to my office in Dallas, Texas, that is, the office of the Coca-Cola Bottling

(Deposition of T. C. Lupton.)

Company. You ask if I had kept them in the meantime; we have filed them away, General, we file all of our orders away in a file. We filed these every month approximately. Yes, sir; we had other orders before we got these similarly addressed—we destroyed them. Our files get so full we destroy them every year, we don't keep them more than a couple of years. The orders that were prior to these in date were destroyed, I think they were burned up. We had our files full and there was no use for them, they were in the way blocking our office after they were filed. We don't feel there is any use filling our office with boxes of files lying up there a long time. (General Crane here gave these orders to the examiner and asked him to put his memorandum on the bundle and fasten them together so they could not be questioned hereafter.) You ask if we bottle any fluids other than "Coca-Cola"; yes, sir; we bottle four or five different kinds of soda-water and have been doing so for four or five years. Yes, sir; we were bottling other characters of fluid in addition to "Coca-Cola" at the date when these orders were received, but we did not fill any of the orders which have been exhibited to me for "coke" with any fluid we were bottling except "Coca-Cola." No, sir; we have never bottled the commodity that they know as "Koke,"—never in my life, never. I have never sold it in my life, never. These customers never have asked us for "coke" except as in these orders. These orders mean "Coca-Cola." No, sir; none of our customers ever asked us for "Koke," never.

(Deposition of T. C. Lupton.)

They have never asked us for "Koke" that was manufactured by the Koke Company, unless those orders called for that. These were the only orders on that subject. I interpreted these as calling for "Coca-Cola."

Cross-examination by Mr. DART. [630]

I said my occupation is manager of the Coca-Cola Bottling Company, Dallas, Texas. No, it is not incorporated in Dallas, but in Chattanooga, Tenn. No, sir; it is not connected with the Chattanooga Bottling Works, but we are incorporated in the State of Tennessee. Yes, sir; there is a Coca-Cola Bottling Works in Chattanooga. No, sir; that concern is not handled by a man of the same name nor is it handled by my brother. There is no Lupton that I know in Tennessee in the "Coca-Cola" business. J. T. Lupton is the president of the Coca-Cola Bottling Company from Georgia, down, but not in Tennessee. He hasn't got a thing to do with the Coca-Cola Bottling Company in the State of Tennessee. He is my uncle. I have been manager of the Coca-Cola Bottling Company in Dallas since, I think, 1904. I was in Houston at one time and have been in the business about ten or eleven years. It will be five years that I have been in the "Coca-Cola" business in Dallas, this coming March. Yes, sir; I have been in charge of this bottling plant in Dallas, since 1910. You ask me to turn over that bundle of exhibits in my hand and to tell you the earliest date of any of the orders in that bundle of exhibits. The first I can find is dated September 7, 1912, and the latest is June 21,

(Deposition of T. C. Lupton.)

1914. I would have to go through and figure up what the quantity of material covered by that bundle of exhibits is,—it's so many cases. I don't carry them in my head. I would have to go through it and figure out and see. We have a tabulation on our books of the quantity of stuff which is covered by the documents I have in my hand, but I couldn't carry it in my head. No, sir, I have never tabulated it for the purpose of this investigation, not a particle. No, I don't know off hand what quantity of "Coca-Cola" is covered by the exhibit in my hand, I haven't figured up the number of cases. Yes, sir; I can do it and I will do it. Yes, sir; I understand that what you want is an itemized statement or tabulation showing the date of these orders, the quantities ordered and the names and addresses of the persons ordering them. Yes, sir; we keep a record in our office of the quantity of "Coca-Cola" that we sell, most emphatically. I most emphatically will, at the same time I make the tabulation [631] above mentioned, give you a memorandum showing by dates the quantity of "Coca-Cola" which we have sold beginning at the period of that first letter down to and including the date of the last letter. Yes, sir; I understand what you want. Yes, sir; I know our customers sufficiently well to be able to say that the bundle of papers in my hand are genuine orders from genuine customers. I looked over that bundle of papers yesterday. No, I didn't—I only looked over them as we filed them away. I haven't looked at them since they were filed away. Yes,

(Deposition of T. C. Lupton.)

sir; I know some of the people personally who gave us the orders. I don't know them all, but I think I know the biggest majority of them. No, sir, they are not all in Dallas. Yes, sir, some of them were scattered over various parts of Texas. No, sir, those are not all of the orders we received. This is the "coke" orders. You ask if these are all the orders I have received from 1912 to the present date in which the people have called for "coke" meaning "Coca-Cola"; well, if I was to go through all my files I would venture to say this is not all of them. I didn't produce them all because it would have taken time and I didn't think it was necessary to produce all of them. You ask if it was I who thought it was unnecessary or if it was somebody else who thought so; I don't know, somebody else didn't say anything about that to me so far as that goes. You ask how I came to hunt up that particular part of them; well, Mr. Rogers came down and asked me if I had any orders and I said "I will go through my files and see if there are any orders"; and this is a few that I found. No, sir; I personally did not go through our files to see what we had—I watched it going through. Somebody else did it for me but my bookkeeper and I was right there by him. I wouldn't say that the bookkeeper turned over every one of the files of 1913 and 1914. Yes, sir; I was right there and watched him going through the file just like I watched these orders when they came in, I opened them and his instructions were to go right down through the file and we were searching

(Deposition of T. C. Lupton.)

for the information these exhibits were to furnish us—that is to say we were searching for the orders given by our customers for “coke.” [632] You ask why we made an incomplete search and why we did not make a full search; I was under the impression that this lot of orders right here would be enough to make any man that had any common sense understand that they meant “Coca-Cola” when they ordered “coke” from the Coca-Cola Bottling Works. I thought that was enough to accomplish the whole thing that was necessary. You ask if it is not a fact that my bookkeeper and I did go through all of our files; exactly, we went through some files. You ask again if we went through all of our files; I got an automobile down here and you can go down with me and go through them. You ask again if we went through all of our files; no, sir, I think not. You ask how many we left behind; well, possibly eight or ten files. I never count the files; I couldn’t hardly tell you how many thousands of orders those eight or ten files would cover. Yes, sir; we have produced all the orders with reference to “coke” which we found in the course of our investigation; that is right. If we have any more, I haven’t produced them and haven’t seen them recently. You ask if I know that there are any more; well, I wouldn’t take a dying oath that we have some more, but I believe we have. In any event, as far as I saw orders of that kind I have produced them. The orders which I have in my lap amount to one-twelfth of all the orders sold by us in the period covered by

(Deposition of T. C. Lupton.)

these orders. You say you want me to verify that for you by giving you the figures you asked for a while ago, and you further say that in that connection you want to impress on me what you want; namely, that you want me to certify for you the entire output of my bottling works for the period covered from the earliest date of one of these orders down to the oldest date of the last of the orders and you ask if it is clear to my mind what you want; now, Judge, that is a question that is hard for me. There is but one way I could get it and that is to go over the number of cases that these orders call for. I think that would be the only safe and satisfactory way to get the straight of it. Yes, sir; I understand that I am testifying under oath in a case involving property and money and that it is a serious business; and I further understand that no man ought to go on the [633] witness-stand in a tone of merriment or laughter and make guesses. Yes, we put up "Brew" but I couldn't tell you whether there is an order for "Brew" in this bundle of orders which I hold in my hand. No, sir, we have not been bottling it all the time since I have been in Dallas; we bottled "Iron Brew" last year. I am not a chemist, Judge, I can't tell you what it is. No, sir; it is not a "Coca-Cola" product. Yes, sir, we did put it up in "Coca-Cola" bottles, but I don't do it now, not "Iron Brew." However, we did last year; yes, sir. The "Brew" that was called "Brew" before "Iron Brew" was put up year before last. You ask if we put that out in "Coca-Cola" bottles also;

(Deposition of T. C. Lupton.)

we put it out in soda water bottles. No, sir, we did not put it out in "Coca-Cola" bottles, but in soda water bottles. Now, Judge, it could be that soda water got into a "Coca-Cola" bottle; of course, that is pretty hard to say, but we are bottling soda water in soda water bottles and "Coca-Cola" in "Coca-Cola" bottles. You ask if it would be an accident if you were to show me a bottle out of my own works containing "Brew"; well, Judge, nearly everybody has used my bottles, I couldn't tell you, I couldn't determine. Yes, sir, when you get a bottle from my works it is my bottle. No, it wouldn't be an accident at all, if you got a bottle from my works containing "Brew." You say you understand me to say that last year I put up "Iron Brew" in "Coca-Cola" bottles; we put up some, yes. No, sir; it is not equally true that a year before last and the year before that we put up plain "Brew" in "Coca-Cola" bottles; we put up black soda water, what we call black soda water. No, sir; I don't deny it was "Brew," we sold it as black soda water. Now the man sold it, he might have sold it as "Brew," but I sold it as black soda water. It is a little darker than "Coca-Cola." "Iron Brew" is about the color of "Coca-Cola." No, sir, we never bottled sarsaparilla in our lives. Yes, sir; "Iron Brew" had the word "Brew" on the cap on the bottles. Yes, sir; it had the simple word "Brew," no "Iron" about it at all. No, sir, there was not a thing on the bottle to indicate that it was "Iron Brew." You ask if, on the contrary, it was not in a "Coca-Cola" [634]

(Deposition of T. C. Lupton.)

bottle, it was in a soda water bottle. I said some of them were accidentally filled in a "Coca-Coia" bottle. You say that when we used "Iron Brew" we put them up in "Coca-Cola" bottles; some of it, Judge, we did, and when we got out of "Iron Brew" we took up plain "Brew." Yes, sir, that's right, the top, the cap, is marked "Brew" and it is in a bottle identified by our name blown into it, that is the kind of bottle we send it out in. You ask if that is the same kind of "Coca-Cola" bottle that has the design "Coca-Cola" blown on the shoulder; no, it has no trademark on the bottle. It is just a plain bottle with just two little c's on the bottom with probably Coca-Cola Bottling Works, under the trademark on it. You ask if it is not otherwise the "Coca-Cola" bottle in size, color, shape, and design; no, sir, it isn't the shape and not exactly the size or color. No, they are not as nearly alike as two bottles can be that are made out of the same mould, I believe it is different. Well, Judge, not to make it extravagant, I would venture to say that we have two hundred shipping customers who order "Coca-Cola" by mail. No, I do not mean to say that all of these are the kind of men who give us these sort of orders, I just mean regular shipments. When I say shipping customers I mean out of town men, men who send us written orders from out of town. I just gave you a small estimate of the number of them, it is likely to be more than that. You ask me to add to that memorandum you have already asked me for, a statement made up from our books,

(Deposition of T. C. Lupton.)

giving the total number of our shipping customers right through that same period, whether two hundred or five hundred—you say you don't want the names but just the total number of men we serve with "Coca-Cola" under shipping orders; all right, sir, I will do it. You ask if you understood me to say that we mixed our own syrup; our soda water, yes, sir, but we don't mix any "Coca-Cola," it comes in barrels from the Coca-Cola Company of Dallas, Texas. Yes, sir; that is made right here in Dallas, but we don't make it. You ask who makes it in Dallas; Mr. Dan Candler is the manager of the Coca-Cola Company of Dallas and he has a place here where he makes it. [635]

Redirect Examination by General CRANE.

In mentioning our shipping customers I did not include in that number those who ordered it from us exclusively by 'phone, I just included all the orders. In mentioning my shipping customers I did not include any customers other than those whose written orders I filed, nothing but the written orders. Yes, sir; we have about twenty-five customers to whom we ship on telephone orders without written orders. You ask if those customers who order "Coca-Cola" from us by telephone call it anything else than "Coca-Cola"; they call up and say "boys, my wagon is coming in; put me twenty cases of 'coke' on the wagon." Just before I left, Mr. Battie, at Grant Prairie, called me up and told me "my wagon is coming in, put me thirty or forty cases of 'coke' on the wagon." We do not keep any record

(Deposition of T. C. Lupton.)

of the telephone orders for "coke"; we put it down on the record "Coca-Cola." Any orders of that character wouldn't disclose what our customers called for. When they asked for "coke" we let them have "Coca-Cola." We know it is "Coca-Cola" they want. Yes, sir; our regular customers from a distance,—that is, outside of Dallas County,—order "Coca-Cola" by telephone. They do not always call it "Coca-Cola," they sometimes call it "coke." I can go over the books and tell you, General, in a few minutes how much "Coca-Cola" we sell on long distance telephone orders, and I will do that and file the statement here. You exhibit to me a bottle with a "Koke" label and "Koke" crown on it and ask me to examine it and see if we put up that bottle; no, sir, we didn't. It says on the bottle "Coca-Cola Bottling Works, Dallas, Texas." Yes, sir; those are the works of which I am the manager. The label on the bottle reads "bottled under authority of the Koke Company of Texas, Dallas, Texas, W. McCarthy Moore, Pt. "Trade-Koke-Mark registered, August 21, '06, No. 55878, U. S. Patent Office." You ask me to read, too, what is on the crown; well, that is hard to read, it's got nothing on them that you can really read, General.

(Mr. CRANE.—Well, the crown is defaced.)

(Plaintiff here tendered and offered in evidence the bottle in question as an exhibit in this cause.)

[636]

(The introduction of said bottle was objected to by the defendants on the ground that it had not been identified or brought home to the defendants.)

(Deposition of T. C. Lupton.)

Yes, sir; that is the Coca-Cola Bottling Company's bottle. That is one of our soda-water bottles. No, sir; I have not a "Coca-Cola" bottle convenient. Yes, sir; I have seen that bottle or one like it before with the Koke Company's label and crown on it. I have bought it from several places, General. I have bought it off the Green Bottling Works' wagon, and a little stand across Commerce Street Bridge, I can't recollect the name. Yes, sir; I mean to say that I have bought bottles of that size and shape more than once—my own bottles with that fluid in it and labels on it of the Koke Company in the city of Dallas. Those purchases were made in the last two weeks. No, sir; I did not bottle any of the fluid in these bottles so purchased and none of them was filled under my authority. No, sir; I did not know what was on the inside of the bottles and I did not open them to ascertain; just bought them and set them aside. The color of that syrup is very similar to the syrup in the other bottles, which I likewise bought. It is very hard to tell the difference between that and "Coca-Cola" as to color. The coloring matter is very much the same. You now exhibit me another bottle and ask whether or not I have ever seen this bottle before; well, General, I have sent so many bottles up, now that particular bottle—there has been so many in my place I have got a little house full of them there now. I sent one of these bottles, which is similar to this to Mr. Rogers. (Mr. CRANE.—We will put that into the record with the statement that this is the bottle that we got from him.)

(Deposition of T. C. Lupton.)

Recross-examination by Mr. DART.

No, sir; I did not say that I have got a whole house full, but a rack full of them. You say there is a good, big difference between a house full and a rack full; I have seen a small house, a bird house that it would not take so many to fill. No, I was not referring to bird house when I said a house. You caution me that I am under oath and say you can't understand humor or [637] levity when sworn statements are made; well, Judge, we do have lots of them; I have never counted them but we have lots of them, and my men are out to-day buying them as fast as they can get their hands on them. It looks like everybody is using my bottles, putting different labels on them—it's annoying to me. I have got men out and I want to show them that they are using my bottles and I don't believe it is right for them to do it. No, sir; I have not had men out a long time for bottles, no, sir; I told these men to buy every bottle that they could of mine and that some day I might possibly want to prosecute somebody for using a "Coca-Cola" bottle, my property. I just want to show them, you know, that they are using my bottles. I just told my driver to buy up my bottles with somebody else's goods. I didn't tell them what line to buy, even if it had lemon soda in my bottle, bottled by somebody else. We have had men out buying up bottles of this character, which I say contain "Koke," for three or four weeks. I didn't specify in there, Judge, "Koke," I just said "boys, if you find any of my bottles

(Deposition of T. C. Lupton.)

buy them up, if anything comes up I can take it to Court and show they are using my bottles,"—that was my theory in buying up those bottles. Well, I would say that we have been searching for bottles of the character of plaintiff's exhibit #153 for a month. No, I have not been searching for that name. I have never as a matter of fact had a search made for my bottles filled with "Koke." You ask if I meant what I said a while ago when I said that I had accumulated a house full of bottles filled with "Koke"; I said with different brands, Judge, not of "Koke." No, sir; I cannot tell you how many bottles I have succeeded in getting nor how many bottles we got filled with "Koke." Yes, sir; I am able to identify that bottle there marked Plaintiff's Exhibit #153. Now, Judge, as far as having it in my hands is concerned, I can't say, but I can say—this house, it's in my house, where I was working. Yes, sir; that bottle was in the house where I am manager, that is my bottling works. Yes, sir; there is something on the bottle to indicate that (the witness here pointed to the words "C-C" on the bottom of the bottle.) [638] You ask if I blew that in as a means of identifying this bottle or if I mean to say that at one time in its history this bottle came out of my bottling works because it has the letters "C-C" blown in it; Judge, we had all these made on that description—"C-C"—"Coca-Cola" bottles. You ask if I think that is an intelligent answer to the question, and you again ask if there is anything on the bottle to indicate that I ever saw it be-

(Deposition of T. C. Lupton.)

fore in its present condition full of a liquid which I say is "Koke"; no, sir; not a thing. As far as me having it in my hand is concerned, I cannot identify it; no, sir. I haven't any idea who put that label on that bottle. Judge, I have no idea of what is in the bottle. Judge, I have no idea of what was on the crown, originally. All I know is that it is a bottle that belongs to the category of bottles manufactured for our bottling works, that is it, Judge, just it exactly. Yes, sir; I said a while back that there were occasional "Coca-Cola" bottles that had "Brew" in them. You ask if the bottle which you hold in your hand, Plaintiff's Exhibit #153, is a "Coca-Cola" bottle; no, sir; that is a soda-water bottle. "Re-XQ. 35. Then what you meant was—when you answered my previous question about 'Brew' being in 'Coca-Cola' bottles—you meant in a bottle which contained the trademark blown on the shoulder of the bottle." "A. That is right, Judge." You say that nobody would mistake the bottle which you hold in your hand for a "Coca-Cola" bottle; well, Judge, some people, you know, could be mistaken in it, it's the size of the "Coca-Cola" bottle but it hasn't the trademark. No, sir; the bottle which you hold in your hand is not a "Coca-Cola" bottle, except for the fact that the word "Coca-Cola" is not blown on the shoulder. No, sir; it is not like a "Coca-Cola" bottle. You ask how it differs from a "Coca-Cola" bottle,—well, Judge, it is a little bit taller, it is built a little bit different from "Coca-Cola" bottles. You ask me then how it is that I say

(Deposition of T. C. Lupton.)

people would mistake this Exhibit #153 for a "Coca-Cola" bottle; well, they hold the same, Judge, they hold the same amount. "Re-XQ. 45. I ask you why you swear that bottle #153 not being a "Coca-Cola" bottle could ever be mistaken for a "Coca-Cola" bottle, why do you swear that?" [639] "A. Well, Judge, they could be mistaken, according to my judgment because the 'C-C's' on it, they would take that for a 'Coca-Cola' bottle—could do it, couldn't they?" You ask who would; I say anybody drinking it, it is about the shape of the "Coca-Cola" bottle. I believe, Judge, that anybody looking at that bottle #153 would be liable to take it for a "Coca-Cola" bottle. "Re-XQ. 49. In other words, it would take an expert like you—" "A. No." "Re-XQ. 50. To pick out a 'Coca-Cola' bottle from one of the soda-water bottles—" "A. Yes, it is hard, Judge, it is hard, no doubt about that." "Re-XQ. 51. About as hard a task as sorting out black-eyed peas, one from another?" "A. I didn't say black-eyed peas, but it is a hard job." "Re-XQ. 52. Now, a while back you told me that when you had quit using 'Coca-Cola' bottles for 'Brew' and started putting it in soda-water bottles occasionally 'Brew' would get into 'Coca-Cola' bottles but it was an accident; that's fair, you told me that?" "A. Yes, sir." "Re-XQ. 53. Well, what you say about another bottler getting his stuff into your bottles by accident—that couldn't happen, could it?" "A. 'Yes, it could.' No, sir; we have not an exchange place where we exchange bottles. No, sir; I am not

(Deposition of T. C. Lupton.)

the boss of the whole business. We charge forty cents as a deposit on a case and when they bring them back they get it back; we just charge that for safety. You ask why I am so zealously hunting up people who are selling my bottles filled with their stuff and you ask if I own the bottles after I sell them to my customers; it's like this, you know, judge, you can go to any place, glass-house anywhere and buy two dozen bottles to the case for forty cents, this is merely a safety for our bottles, we don't sell them but we know that forty cents deposit will return our bottles to the house, it isn't really selling the bottles—I would be glad all day long to buy bottles for forty cents at two dozen in a case; yes, siree. You say you are only interested in this question because I said very vigorously that I had ordered my men to find out to-day these men using my bottles and indicated that I was going to prosecute them; I said they ought to be prosecuted. You ask if I think they stole my bottles; no, I didn't say it was stealing, Judge, I didn't say it was stealing. [640] No, I never have hunted up anybody to find out how "Koke" got into a soda-water bottle of this kind; I never set up an investigation to find out. No, sir; I personally didn't by this particular bottle, nor did I personally buy any of the bottles, nor do I know where they come from except in so far as I believe my drivers. Yes, sir; I claim that is right; namely, that when I testified where these bottles came from I was merely testifying to what somebody else told me; I claim that is right. You say that your friend, General

(Deposition of T. C. Lupton.)

Cane, here, got me to say that I have a large quantity of telephone orders; that is right. When I am there, Judge, I do answer the telephone myself. Well, I would say I am there about seven hours a day. You ask if during that seven hours I, the boss of this big plant, spend my time taking telephone orders; lots of times I do. You say that it isn't my duty, though; well, I wouldn't miss an order because it wasn't my duty, but of course, I have something else to do besides taking orders. As a matter of fact we have a young man to take orders. You ask if it is only when he isn't doing his duty that I take up the 'phone and take an order; no, sir; I am sitting here and my 'phone is right there and it is very easy for me to pick up a 'phone and take an order. If my young man isn't attending to his business, isn't at the 'phone, then I might happen to pick it up. You say that from what you gather the word "Coca-Cola" is never used by our customers by mail, telephone or otherwise so far as I know; oh, yes, lots of it. You then ask whether we have other people who give us orders over the telephone and call it "Coca-Cola"; Judge, that is a question I don't believe that I can answer, but they all call it "coke" and I know what they mean when they say "ship me two cases of 'coke.'" Yes, sir; I think I have customers who send telephone orders and call it "Coca-Cola," I have got orders for "Coca-Cola." No, sir; the men who call it "Coca-Cola" are not in the minority, we have several that call it "Coca-Cola." We have lots of them that call it "Coca-Cola" and lots of them

(Deposition of T. C. Lupton.)

"coke." No, sir; as a business man I can't say what proportion of our trade call it "Coca-Cola" and what proportion call it "coke," I can't answer that question [641] because I don't know.

(Plaintiff here tendered and offered in evidence the bunch of letters referred to by the witness as Exhibit #152 and also the bottle referred to as Plaintiff's Exhibit #153.)

Deposition of C. D. Kingston, for Plaintiff.

C. D. KINGSTON.

Direct Examination by Mr. ROGERS.

I am a druggist, located at 322 Main St., Dennison, Tex. The name of my store is C. D. Kingston Drug Company. I have been in the drug business in Dennison for 23 or 24 years, but I have only had a soda-fountain for six years. Yes, sir; I dispense "Coca-Cola" at my fountain. Yes, sir; it is a drink that is in demand. Yes, sir; I am about the fountain myself so that I can hear people when they come in and ask for the drinks they want and know the names that they use. No, sir; the name "Coca-Cola" is not invariably used in full by people who consume "Coca-Cola" at my fountain. Some ask for "Coca-Cola," some "coke," some "shot in the arm," some "dope." When a man asks for "coke" I understand that he means "Coca-Cola" and "Coca-Cola" is what I supply. I have never had it rejected on the ground that it was not what was asked for. I don't know how long I have known these words "coke," "dope," "shot in the arm," etc.,

(Deposition of C. D. Kingston.)

to be used as nicknames. It has been so long I have never paid any attention. It has been pretty near ever since I have been selling "Coca-Cola,"—for five or six years—ever since I had a fountain. You ask if I have ever had an interview with a man representing the Koke Company of Texas, with respect to the product "Koke"; I couldn't tell you whether it was "K-O-K-E" or "C-O-K-E"; I know I had a representative from Dallas trying to sell "Koke" to take the place of "Coca-Cola." There was a gentleman with a Mr. Boyd who was with the Texas Drug Company, he introduced me to this gentleman,—I have forgotten his name—he asked me would I take a drink, and we lived in a dry town and I told him I would; he got a leather covered flask from his pocket and started to fixing a "Coca-Cola" highball; he said "just try one" and gave me the glass and he poured out one and said "mix the two and taste the two and see which is better, if you can tell the difference"; I told him, no, that I didn't care to take a "Coca-Cola," I just had one, I thought [642] he was going to give me a drink. He said he was selling "Koke" at a cheaper price than "Coca-Cola"—selling it at \$1.25 a gallon. I told him I didn't care to put any "Koke" in; that I was doing a nice business on "Coca-Cola" and I thought it was a steal, that he was putting his out; well, he kind of got mad at that and didn't think it was a steal. He said he was vice-president of the Company and I told him I didn't give a dam if he was president of the Company, that was what I thought just the same. He didn't stay

(Deposition of C. D. Kingston.)

very long and that was about the sum and substance of it.

Cross-examination by Mr. DART.

I have handled "Coca-Cola" altogether, nothing but "Coca-Cola." Yes, sir; we have a pretty nice business in it, we do something over—well, from four to five hundred gallons of it a year. We have never handled any other kind of soft drinks resembling "Coca-Cola." Yes, sir; I have come over here from Dennison to testify at the request of Mr. Pierce. Dennison is about seventy or eighty miles from Dallas. No, sir; I did not come at my own expense. I came at their expense. I came down with Mr. Peace instead of Mr. Pierce.

Deposition of F. L. Skillen, for Plaintiff.

F. L. SKILLEN.

Direct Examination by Mr. ROGERS.

I am a druggist and live in Dallas, Texas. My place of business is located at 812 Commerce St. I operate a soda-fountain at my drug-store and have done so for eight years. Yes, sir; I deal in and dispense "Coca-Cola" at my fountain. Yes, sir; I am at the fountain myself so that I can hear people when they come in and ask for drinks. Yes, sir, I know the names they use for the various drinks they want. The people at my fountain indicate that they desire the product of the Coca-Cola Company by calling for "Coca-Cola" and "coke." When a person calls for "coke" I understand that he means "Coca-Cola" and "Coca-Cola" is what I supply in

(Deposition of F. L. Skillen.)

response to such demand. I have never had it rejected as not what was asked for. I would say that about twenty-five per cent of the people call it "coke." I have known "coke" to be applied as a nickname for "Coca-Cola" ever since I have been serving it, which was fifteen years. [643] I couldn't say directly that I ever had an interview with a salesman representing the Koke Company of Texas. I had an interview with a gentleman selling "Koke"—I don't know whether of Texas or where—but he was selling a product that he called "Koke." He came in and introduced himself—I can't remember his name, in fact I couldn't remember your name that you told me yesterday, but he said he was selling "Koke" and I told him that I didn't handle it. He asked me why I didn't handle it and I told him we didn't handle anything but "Coca-Cola." He says "what are you going to do when people call for 'Koke?'" I said, "I am going to give them 'Coca-Cola.'" "Well," he said "don't you know that you lay yourself liable to prosecution?" I told him I didn't think I did, that I didn't think any of my customers wanted anything but "Coca-Cola" and that it was a free country and they had every opportunity in the world to prosecute if they felt that way, that we didn't sell anything but "Coca-Cola" and would continue not to sell anything but "Coca-Cola." He then told me I ought to handle it. I asked his price and he said \$1.25 a gallon, and I told him "Coca-Cola" didn't cost us that much the way we bought it. He was very persistent and I

(Deposition of F. L. Skillen.)

guess he must have talked for about three-quarters of an hour and I finally showed him the door. I told him that we believed and thought we were right, that ninety-nine out of every hundred that called for "coke" wanted "Coca-Cola"—that I wouldn't state that positively, but that was our belief and we believed it so strong that that's what we gave them and we didn't have anyone to kick on it. He stated his product was cheaper than coca-cola. We took over the Browder Pharmacy from the U. S. Court. Yes, sir; we found among the assets what we supposed was "Coca-Cola." There was a barrel which we supposed was "Coca-Cola" and I inquired of the soda-man if he had any "Coca-Cola" on hand and he said, yes, about ten or fifteen gallons. I passed in the back room and saw a red barrel sitting there and passed on out and we served all of that. Yes, sir; we served it as "Coca-Cola." You ask what made me think it was "Coca-Cola"; why, I suppose it was innocence more than anything else, we don't serve anything else but "Coca-Cola" and didn't suppose anybody else did. I asked him did he have any "Coca-Cola" on hand and he said, yes. You ask if the color had anything to do with it; yes, it was red and I supposed it was [644] "Coca-Cola." You again ask if the color of the barrel had anything to do with it; yes, the color was the "Coca-Cola" color. When that was sold and we ordered a barrel of "Coca-Cola" delivered to us to the store the salesman from the jobbers said they hadn't been handling "Coca-Cola" over there and then I told him it must

(Deposition of F. L. Skillen.)

not have been "Coca-Cola" that we had and then I asked the soda-man about it and he said it was not; and we had an employee at that time, who had formerly been with Mr. Browder, by the name of Mr. Sam Weir, and I asked Sam if that was "Coca-Cola" and he said, "No." (The conversation detailed above and the reply offered in the conversation by the employee are objected to by the defendants because hear-say. Objection overruled. Exception.)

Cross-examination by Mr. DART.

I took over that store April 11th, I believe, 1912. The conclusion that we arrived at was that it was a store that had been selling "Koke." The Coca-Cola people didn't tell me that; I said the salesman from the wholesale drug house who had Mr. Browder's business, and he had never been able to sell him "Coca-Cola." Our dealings are not through the Coca-Cola Company but through a jobber. It was patent to me that the house I took over was not handling "Coca-Cola." I on the contrary handled "Coca-Cola" strictly and do not handle anything else. I couldn't answer whether "coke" is the only name I ever heard "Coca-Cola" called by or not; we may have had a few calls, and I believe we have, where they call for "dope" but those are so few that they have been exceptions. I know of no other name. I have been my own master as a druggist eight years and prior to that time I was serving somebody else. I am now twenty-eight years old. Before I was thirteen years old I was working for

(Deposition of F. L. Skillen.)

my father. I was never employed in any other way except for him and for myself. No, sir; I have not always had the extensive business I now have. The service I have known anterior to being my own master was always in Dallas. Yes, sir, we in the trade know that "Coca-Cola" has its trade name, "Coca-Cola." You ask if we offer "Coca-Cola" to the people as "coke" or "dope" or anything of that kind; we offer it in this way, when they call for "coke" we give them "Coca-Cola," but we [645] don't push it or advertise it by any other name than "Coca-Cola," and, in fact, we don't push it or advertise it at all. Yes, sir; I generally call for "coke" myself, when I go to my own fountain, I say "give me a 'coke.'" You ask if I use that name with people generally; I hardly ever speak of "Coca-Cola" unless somebody asks me do I think "Coca-Cola" hurts them or something of that kind. I have had such inquiries, yes. I have had them to ask me if there was cocaine or dope in it as they call it. I have explained to them that so far as I know it hasn't a thing, for my information comes from the Coca-Cola Company. I haven't had, recently, any such inquiry. I don't think I have had one within a year. In fact, I believe the only time I remember—I couldn't say how long it has been, it has been sometime—I went to Dr. Smart's office and was examined for the Coca-Cola Company as an habitual user of "Coca-Cola"; at that time there was quite a number examined, and some one asked me where I had been and I made the remark and I

(Deposition of F. L. Skillen.)

believe that is the last time I had a discussion as to what it contained. I was examined at the request of the Coca-Cola Company, to see what effect it had on me. I don't know why they should have done that. My conclusion was that it was because they wanted evidence to rebut the belief that "Coca-Cola" was harmful to you. I don't know how long ago it was that I was examined, I couldn't say, about two years I think. A lady called on me, Mrs. Weaver, and asked me to be examined. I couldn't say who she was representing because I didn't know but she asked me if I was an habitual user of "Coca-Cola" and I told her I supposed I would be so called, and I told her I drank five or ten a day and she asked me how long I had drunk it and I told her ever since I could remember, nearly, and then I went to a physician and stood a physical examination. It was about the same kind of examination as I stood when I went up for life insurance. They tested my heart, blood pressure and urinary analysis. I never heard anything further from it, and I don't know what his report was. After that examination somebody asked me where I had been and I told them and we naturally entered into a discussion, whether it was harmful or not. [646] No, the person I was discussing it with did not take the position that it was harmful, he asked me what I thought about it—he also was a drinker of "Coca-Cola." The discussion turned principally on the contents of "Coca-Cola." He asked me if I thought there was cocaine in the drink. I sell very little cocaine now. I don't sup-

(Deposition of F. L. Skillen.)

pose I have sold one-eighth of an ounce in five years. There has been a law against it since I have been in the drug business, and that is the reason I don't sell it. Only in a casual way do I come in contact with cocaine users, we sometimes have a call. I have not come in contact with any of them, enough to know that they call it "coke." The class of trade in my location is very high and a party who wants to take cocaine for a toothache claimingly, they generally ask can they get cocaine. It might be an habitual user refers to it as "coke," I can't say as to that. Yes, sir; cocaine has a sort of black eye professionally, the law prohibits the sale of it. A law was passed before I was twenty-one years old. No, sir; I don't recollect the discussion about the drug which caused the law to be passed. I handle what I guess you would call a large quantity of "Coca-Cola." I should say it is about thirty-five per cent of my soda business. To me it is a lucrative business and is a business which I am anxious, of course, to keep. I couldn't say whether I would want to dispense with "Coca-Cola" or not, I would hate to dispense with it and let somebody else sell it, though. I want my share of the patronage. It seems to be a business that was created without any effort of mine. I have seen root beer barrels and "Dr. Pepper" barrels—I haven't had a root beer barrel in several years. No, sir; Dr. Pepper does not put up his drink now. "Pepper" was blue and the root beer yellow. They have ceased to do business, so far as I

(Deposition of F. L. Skillen.)

know. I have had some recently but it didn't come in barrels.

Yes, sir; "Coca-Cola" and the Koke Company are the only ones that use barrels, so far as I know—I don't know whether "Koke," uses barrels. You say that I don't know how that syrup got into that barrel and don't know really that it was not "Coca-Cola"; the man that was employed there said it was not "Coca-Cola." [647] No, sir; he isn't with me now. You ask if I tasted it myself to see whether it was "Coca-Cola" syrup; I don't think I would be qualified to taste it and say whether it was "Coca-Cola" or not. You ask if I got any complaints from the drinkers at the fountain that it was not "Coca-Cola"; it is so far back that if there had been any complaints I wouldn't have known anything about it, but I sold it laboring under the impression that it was "Coca-Cola." No, I don't know now that it was not "Coca-Cola." Yes, that is an inference from his statement to me. I haven't got any now. The barrel was thrown out, I guess. The Coca-Cola people did not take it up—they take up their own barrels. I couldn't say as to whether or not numbers of "Coca-Cola" barrels are sold as second-hand barrels, they buy all the barrels we empty. I couldn't say why they didn't take this particular barrel, they just said it wasn't their barrel. I asked the driver about it. I couldn't say how it differed from the "Coca-Cola" barrel. I never saw the barrel but once and I just glanced at it. Yes, sir; I have seen other "Coca-Cola" barrels and I didn't

(Deposition of F. L. Skillen.)

notice any distinction between this barrel and other "Coca-Cola" barrels, it was painted red, No, sir; I don't know that it wasn't a "Coca-Cola" barrel, I couldn't swear to it at all.

Redirect Examination by General CRANE.

Yes, at the time I had my physical examination a lady by the name of Mrs. Weaver asked me to be examined. I didn't ask who she was representing but I supposed the Coca-Cola Co. You ask if I don't know that it was during the time that the case of the Coca-Cola Company against Jeff McLemore was pending in the Federal Courts of Houston, in which he was charged with libel for publishing that "Coca-Cola" was a dope deleterious to health and that Dr. Smart was testing habitual users of "Coca-Cola" to see what effect it had on them; no, sir; I don't know about that. I know Dr. Smart was acting for the Coca-Cola Company but I don't know about the case. I suppose it was about two years ago, may be a little longer. [648]

United States
²
Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

(IN SIX VOLUMES)

THE KOKE COMPANY OF AMERICA, THE SOUTHERN
KOKE COMPANY, LIMITED, THE KOKE COMPANY OF
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Appellants,

vs.

THE COCA-COLA COMPANY, a Corporation,

Appellee.

VOLUME III.
(Pages 801 to 1184, Inclusive.)

Upon Appeal from the United States District Court for the
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Deposition of D. P. English, for Plaintiff.

D. P. ENGLISH.

Direct Examination by General CRANE.

I am in the drug business and am a dealer in "Coca-Cola," located at 1333 Peak Street, Dallas, Texas. I have been in business since December first, but have been in Dallas, Texas, since 1900. I have been dispensing "Coca-Cola" at other places in Dallas before beginning at my present place, and have heard customers calling for it frequently during that time. Yes, sir, I know under what different names they call for it; some call for "coke," some "dope," some call it "shot in the arm" and various other names. A good many of them call for it under the name of "coke." I couldn't say exactly how long I had been hearing them call for it as "coke," but I should say some six or eight years, probably eight or ten years. No, I don't know just how long ago the Koke Company of Texas started business in Dallas, only I know that about two years ago, seems to me like, the first I knew of them being very prominent. My customers called for "Coca-Cola" under the name of "coke" long before that. I have served them with "Coca-Cola" when they called for "coke" and have never had them complain at it or say that they wanted anything else. Yes, sir; I suppose they did know what I was serving—well, no doubt they did. You ask if I have ever served any other commodity that was known as "coke" at my soda-fountain; well, in some instances I have served

(Deposition of D. P. English.)

it, yes, sir. When I was with the Palace Drug Company. In my own business, however, I have never served anything but "Coca-Cola." I have never had anything else in the store but "Coca-Cola," and when my customers called for "coke" I served them nothing but "Coca-Cola" under those calls. I was with the Palace Drug Company for several months. They handled "Koke" and I think they handled it exclusively. I don't think they handled any "Coca-Cola," I never knew of them buying any while I was there. They got this product "Koke" to which I refer, from the Koke Company in Dallas, Texas, in barrels, colored red. There was very little difference between their barrels and the "Coca-Cola" barrels, you would not notice it without examining the "Koke" and saw if the "Koke" label was on the end. You ask what label would be on the end instead of the "Coca-Cola" label; I couldn't tell you about that, I don't remember. [649] When people come into the Palace Drug Store and called for "Coca-Cola" they would serve them "Koke." I never heard them advise them that it was not "Coca-Cola." That practice continued in the Palace Drug Store for about three or four months, I think, in 1913 and ceased when Messrs. Florence & Nossick got it. Before the latter gentlemen got hold of the business, Pyle was manager of it. I don't know who were its owners, it was a stock company. This new concern bought it out, I believe, about the 15th of July, 1913, and they immediately went to ordering "Coca-Cola." I left

(Deposition of D. P. English.)

there on the first of December, so I don't know anything about their business since then.

Cross-examination by Mr. DART.

I was with the Palace Drug Company from May 1st to December 1st, 1913, and during that time I don't know of their ordering any "Coca-Cola." They carried "Koke," I know, I remember that. I believe they did serve "Koke" all the time, if they had any "Coca-Cola" in there I never did know anything about their ordering it. I am sure they didn't. No, sir; I was not in the accounting department. I was prescription clerk. The part of the store which I occupied was the prescription department, the majority of the time, and I was *all* in the store part of the time. Yes, sir, the prescription department is in the rear of the store and as a rule I was not visible while making prescriptions—I made them behind the counter—behind the department a great deal of the time. I had nothing to do with the fountain department, at all. Yes, sir; I served drinks there. In the mornings, before the other men got down, I served a good many drinks. Sometimes I would be asked for "Coca-Cola" when I was serving at the fountain. No, sir; I was not asked for "coke" all the time. Yes, sir; I mean to say that I served "Koke" to those people for "Coca-Cola." You ask who told me to do that; it was put in the jar and labeled that and it was their method of doing business, it wasn't my business to get up and publish these things, I was paid to sell a man this stuff and I would just sell it. It was the busi-

(Deposition of D. P. English.)

ness of the Palace Drug Company, I was just working for them. You ask what I know of their methods; well, I know they had the jar labeled "Coca-Cola"—I know they wouldn't expect me to get up and go ahead [650] and explain that it wasn't "Coca-Cola," I noticed the fountain-men didn't do it, if that had been their intention, or if they wanted it done they would have notified me. Yes, sir; I did see a jar labeled "Coca-Cola." I am sure they did have such a jar and I am sure it contained "Koke." No, sir; I did not put it there, the negro brought it from the basement up there himself. You say that I don't know what was in there myself personally and you ask if I ever tasted it; yes, I tasted it. You ask if it was "Koke" or "Coca-Cola"; well, it tasted—they are very similar in taste. No, I do not know the taste of both, I doubt if I could tell them apart, I don't drink but very little. Yes, sir; I have drunk "Coca-Cola" in my life time, but I haven't kept count of the number of drinks, I didn't know it was necessary. I drank "Koke" a good many different times, I couldn't tell you how many different times of that, either. You ask how often I served behind the counter; I would open the store every other morning and I would be there usually about twenty minutes before any of the other clerks got down and people would call in and ask for "Coca-Cola" and I would serve them. I don't know how many men came in and asked for "Coca-Cola," I didn't keep tab. You ask if I am willing to swear that anybody ever came and called for "Coca-

(Deposition of D. P. English.)

"Cola" while I was behind the counter; yes, sir. You ask if I reported to anybody that I was selling "Koke" for "Coca-Cola"; I discussed it with men there in the store, and they argued there was more profit in selling "Koke" than there would be in selling "Coca-Cola" and you would get just as many customers as you would by selling "Coca-Cola." You ask if it was not well known that our store was carrying "Koke"; it was among the boys in the store. You ask if it was not known by everybody that our store was a "Koke" store; it was known by a good many "Coca-Cola" drinkers, they would recognize the difference, but as far as everybody knowing it, I couldn't say. I heard that after the store changed hands. I have had several men come in there and tell Messrs. Florence & Nossick that they would not patronize it—(Mr. DART.—"I didn't ask that, sir; you are volunteering it. We object to that as hearsay." Objection overruled. Exception.) I couldn't say that I reported to my bosses that I was selling "Koke" as "Coca-Cola."

[651] Just as I told you a while ago, I talked it over and Mr. Pyle told me he considered it was making more than he could with "Coca-Cola" and that he didn't lose any customers. You say that that's entirely consistent with the idea that I was selling "Koke" and you ask me the specific question did I tell him that I was palming off "Koke" for "Coca-Cola"; he knew it. There wasn't any occasion for me telling him that I was palming it off because he was buying it and knew what went in.

(Deposition of D. P. English.)

No, sir; I did not ever serve it to any customers and tell them that they were served with "Koke" instead of "Coca-Cola," and I never did go to Mr. Pyle and tell him about anything like that, because he knew it. Yes, sir, he did see me serving it. When he is in the store he is usually right in the front where he can see anything and he was not asleep, he kept his eyes right wide open all the time. No, sir; he did not open the store, but he was there very early. No, sir; it is not true that he never saw me serve it behind the counter at any time. I would know that it is true, I did do it, and I know he has seen me behind there. I never made any record of the number of times he has seen me behind there, but it has been a good many times. I told you he did see me behind there, he was there, everywhere,. Of course, I don't stay there all the time, I go out sometimes—but he saw me there,—a very few days at a time, when he did not see me behind the counter at some time during the day, serving drinks. I have no doubt he saw me serving "Koke" for "Coca-Cola." You ask if I am sure that he did; yes, he saw me. I have not been talking to anybody about this case except a man came out there a while back and asked me when people called for "Coca-Cola" what name they called it and I told him the same as I did you all. No, sir; I did not tell him this story about substituting "Koke" for "Coca-Cola," I never told him at all. I never said anything to him about it until a few minutes ago. I talked to them this morning, though. I told them the story but not all I told you.

(Deposition of D. P. English.)

I did, however, tell them that I was serving “Koke” instead of “Coca-Cola.” I left the Palace of my own accord. Mr. Pyle had gone when I left there, a new man had come in. [652] You ask if I stayed on with the new man and then left of my own accord; I changed when they bought the store. You ask if I am a druggist or a soda-water man; I am a druggist and was employed at this Mr. Pyle’s store, that is, at the Palace Drug Store,—as a prescription clerk. Of course, I didn’t buy the soda-fountain syrup which they served, myself. I don’t remember that I ever ordered any and I don’t think I did, but if I did, it would be just because they told me to order it, that they would be short of it and tell me to order it. I don’t remember, though, that I ever ordered any. Yes, sir; the Palace had a fountain to serve their drinks through. They have the syrup jars at the fountain and keep their syrup in those—porcelain jars made to fit all fountains, just slip them in and out and put the pump in them. That is the way the majority of fountains are served. They have certain spigots for certain things. You couldn’t serve but one drink out of one syrup can. What I mean is we have different spigots for different drinks, different containers for each syrup. The majority of those jars are behind the counter.

Deposition of E. Ewer, for Plaintiff.

E. EWER.

Direct Examination by Mr. ROGERS.

I am in the drug business, 523 South Ervay Street, Dallas, Texas. Yes, sir; I have a soda-fountain in

(Deposition of E. Ewer.)

my drug store. Yes, sir; I am around the fountain so that I can hear people when they ask for drinks, I wait on the trade forty per cent of the time. Yes, sir; I deal in "Coca-Cola." Yes, sir; it is a drink that is in demand, very much so. I presume I sell more "Coca-Cola" than any other one drink. Yes, sir; I know how people ask for it. The majority of them call for "coke." I understand when they call for "coke" that they want "Coca-Cola" and I always furnish "Coca-Cola." No, sir, I have never had it rejected as not what was asked for. You ask what my opinion is as to whether the word "coke" is a nickname or short name among the public; I presume it is just a nickname for "Coca-Cola"—not specially a nickname, either, but just to keep from saying the whole thing, just to shorten the word.

[653]

Cross-examination by Mr. DART.

No, sir, I carry no other drink of that kind but "Coca-Cola" at my fountain. I have never handled any substitute. I have been in business myself about 21½ years. No, I wouldn't say that a large part of my trade calls for "Coca-Cola" by its own name. I would say that the majority of them call for "coke," more call for "coke" than for "Coca-Cola." Oh, yes, "coke" is not altogether the name that they use, there is a percentage of them that do call for "Coca-Cola."

Deposition of D. R. Keyser, for Plaintiff.

D. R. KEYSER.

Direct Examination by General CRANE.

I am manager of the Stovall drug-store, located on the corner of Corinth and Ervay Sts. I have been engaged in the drug business about nine years. I have never dispensed anything but "Coca-Cola" in the drug-stores I have been working at—I have dispensed it for every drug-store for which I have worked. Yes, sir, the concerns with which I have been engaged have been dispensing "Coca-Cola" at the soda-fountain. Yes, I have observed the different names under which customers call for it; they call for it under the name "coke," "dope" and "shot in the arm" and I have had a few of them come up there, personal friends of mine, and say "hit me with one," in a very few instances. With a great many of them the names would depend upon the degree of intimacy between me and them, intimate friends of mine. Practically all of my customers call for "Coca-Cola" as "coke," and when they do so I serve the "Coca-Cola." No, sir, they do not complain about it. No, sir, I have never sold, and have never been connected with a drug-store that did sell, this product known as "Koke," manufactured by the Koke Company of Texas. When my customers, therefore, called for "coke" I concluded that they wanted "Coca-Cola." Yes, sir, there were "Coca-Cola" advertisements about my store. I have never had any "Koke" advertisements there.

(Deposition of D. R. Keyser.)

Cross-examination by Mr. DART.

Yes, sir; I have been serving behind the counter myself. I am now manager, but I serve behind the counter occasionally when the soda-water man is out. That is usually an hour for dinner and an hour for supper. With that exception I don't serve behind the counter myself. [654] This condition has existed for nearly three months. I have been manager for three months. Anterior to that I did the soda work in connection with the work I could do. We sell a great deal of "Coca-Cola." At times when we get rushed, Mr. Stovall would come and help me. The business isn't large enough to carry a regular corps of soda-dispensers. I do the regular work and the soda business, too. I said that practically all of my customers call for it as "coke" and "dope." You ask what proportion call for "dope"; well, more of them call for "coke." I would say about three-fifths of them call for "coke," one-fifth for "dope" and the rest of them call for "Coca-Cola." Yes, about one-fifth of my trade call for "Coca-Cola." Yes, the name "Coca-Cola" is dying out in the trade, being abandoned. I haven't any idea why they should call it "dope" or "a shot in the arm" unless it is on account of the stimulating effect, that's the only reason I have why they should call it that.

Deposition of George C. Kershaw, for Plaintiff.**GEORGE C. KERSHAW.**

Direct Examination by Mr. ROGERS.

I am manager of the Dade Drug Company, located at Elm and Lamar Sts., Dallas, Texas. I have been druggist for fifteen years and have had a soda-fountain and handled soda-water as a dispenser for ten years. Yes, sir, I have handled "Coca-Cola" as a dispenser. Yes, sir, it is a popular drink. Yes, sir, I am about the fountain myself a good deal of the time, so that I can hear people when they come in and ask for drinks that they want, I am right in front. You ask if people who desire drinks invariably call it "Coca-Cola," or if they make their wants known through other means; they seem to have different slang expressions for it,—sometimes call it "coke" or "dope." When a man calls for "coke" or "dope I have always thought that he wanted "Coca-Cola" and have always given him "Coca-Cola." I have never had "Coca-Cola" refused as not what was asked for. You ask how long I have known "coke" to be used as a short name for "Coca-Cola"; practically ever since I have been around the soda-fountain; namely, for about ten years. Yes, sir; I had a visit from a salesman, representing the Koke Company of Texas, in Dallas. The only argument he advanced was that I could buy it cheaper than I could buy "Coca-Cola" and that I could sell it and realize more profits and the public wouldn't know [655] any difference—that I could use it

(Deposition of George C. Kershaw.)

as a substitute, in other words. This interview was probably two years ago, or a year and a half ago, anyway.

Cross-examination by Mr. DART.

No, sir; I cannot remember his name. You ask if I can remember the words he used in talking to me; just like all salesmen—came in and introduced himself, stated his business—"I am with the Coke Company of Pine Bluff," and so on—whatever it was. He said I could substitute and he also said other people were using it and getting by with it. Yes, I distinctly understood him to try to induce me to commit a fraud on the public—that's the way I understood it. Yes, sir; he said he was a salesman for the Coke Company of Pine Bluff; he said that was where it was manufactured—the Coke Company of Pine Bluff, Ark. He was here about two years ago and I have not seen him since. I told him I couldn't use the stuff at any price. You say that from what I say nobody calls for "Coca-Cola" any more, that they called for "coke" and "dope"; well, not altogether. Some people call for "Coca-Cola," some people express it as "coke" and still some others use a worse and more slangy expression—they say "shot in the arm"—"give me a shot in the arm"—all meaning "Coca-Cola," or so taken by me and the soda-fountains. No, the name "Coca-Cola" is not dying out—I guess about half of the people still say "Coca-Cola." As I say, about half of the people call for "Coca-Cola" and about half call for "coke" and "dope" and slang expressions meaning "Coco-Cola." No,

(Deposition of George C. Kershaw.)

sir, I don't try to correct that impression. Yes, sir, we have a lot of literature in our place begging the public not to use nicknames—to ask for “Coca-Cola” under its own name, but I don't try to get people to use those names in calling for it. Yes, about half of my customers call for it under the name “Coca-Cola.”

Redirect Examination by Mr. ROGERS.

No, I have not noticed any lessening of the advertising of “Coca-Cola” in recent years; I believe, if anything, it looks like they are spending more. You ask what is the conspicuous feature of that advertising, what is the prominent thing that I see; I don't know what you mean. You ask if it is the word “Coca-Cola”; yes, its the word [656] “Coca-Cola.” No, sir; I have never seen any “Coca-Cola” advertising that didn't have the word “Coca-Cola” on it.

Recross-examination by Mr. DART.

Notwithstanding all that, it seems that people are increasing in number that call it by nicknames, people take up short names and slang expressions. You say it looks like they are wasting their money advertising under the name “Coca-Cola”; it looks like they have been mighty fortunate so far—the Coca-Cola people have.

Deposition of Tony Giarraputo, for Plaintiff.**TONY GIARRAPUTO.****Direct Examination by General CRANE.**

I am in the confectionery business and sell "Coca-Cola," and have been selling "Coca-Cola" for about thirteen or fourteen years, or may be fifteen years, I guess. Yes, sir, my customers call for it under more than one name; sometimes call it "coke"—"give me 'coke' "—they come say "give me 'dope,' " sometimes, of course, a new customer he say, "give me 'shot in the arm,' " and, of course, I know of no such names because it look too bad in business. You ask if many or few call for it under the name of "coke"; well, of course, in small town, you know, I couldn't say no "coke," of course, get many strangers, but my own folks, men come say, "give me a 'coke.' "—they use such language, the language I was speaking about,—it's custom, you might say, family custom by us, it's like family custom you might say, we do business with every hour, you might say, of course, they are joking, but the name is regular, they say "give me 'coke,' " and absolutely they mean "Coca-Cola"; if you was to try to give him something else they won't stand for it; therefore, I have been in business the time I answered a while ago and I never did have an imitation of "Coca-Cola," they been people try to sell to me, but I never did the buying. I can't tell you who it was who tried to sell it to me. You ask what it was they tried to sell me; well its "Koke," and then they used different names,

(Deposition of Tony Giarraputo.)

too. You ask what they said to me in trying to sell me the "koke"; well, it's natural to say if you want to make some money, it cost cheaper. I suppose he offered to sell it to me at about seventy-five cents gallon—"this syrup costs you cheaper" and say exactly like "Coca-Cola," but, understand, I wouldn't tell them I want to change [657] "Coca-Cola" for different drinks, but I won't change—a man comes to fountain, call for "coke" I want to give him "Coca-Cola," but if they come to me to try to sell imitation, I say I want to go to front and tell the people "this is a 'Coca-Cola' which is not a 'Coca-Cola' "—they no mean "Koke." You ask if he asked me to enter into a contract in writing or anything of the sort; yes, it was a nice-looking gentleman come into my place and says he want to sell me something "Koke"; I tell him "Is it 'Coca-Cola'?" he say, "No, it's something exactly like 'Coca-Cola,' " and they tell me it was one of the firm that used to be the one that makes "Coca-Cola" and I tell him—well, we were speaking about contract; I tell him "if you sign a contract which is pure 'Coca-Cola,' I will take a barrel on trial, but if it not good 'Coca-Cola,' if it not 'Coca-Cola,' I send it back," and, of course, he forces me to sign a contract and that they give me a share in the business, and, before I sign a contract with you in regard to this business, we got to go to the lawyer, because I no sign no paper until I know what's doing, and, of course, I never see this man no more, and he really no call on me since that time; I had a call about twice, I guess it was, about eight years ago, I bought

(Deposition of Tony Giarraputo.)

a five-gallon of "Koke" which they call "Celery-Koke," but, of course, I thought it was "Coca-Cola"—"Celery Koke." But when you find people they want "Coca-Cola" instead of "Koke" or "Celery-Coca-Cola," and I didn't display the "Koke" or sell the "Koke" at all, and the consequence is I can swear I throw in the scavenger wagon about a month or two ago, I have been keeping the stuff about eight years.

Cross-examination by Mr. DART.

You ask if I think now that I am exonerating myself from any charge of substituting other drinks for "Coca-Cola." What you say, please sir, I don't understand? You ask if I think these people are after me now to make me clear up my store so that I won't be guilty of selling anything but "Coca-Cola"—pardon me again, I don't exactly understand your meaning. You ask what I am testifying here, what kind of a case; I tried to do exactly what they asked me—I don't try to do anything. You ask what I am doing here now; I just answer the questions the gentleman asked me. You ask if I know what they are [658] asking me about; ask this fellow here, this bookkeeper here, he will tell you. Yes, sir, I mean the stenographer. Well, yes, I understand that I am here to clear myself from a charge of selling a substitute. Yes, sir, that is what I came here for, to make it plain that I haven't been selling substitutes for "Coca-Cola." You ask if I think they are charging me with selling substitutes for "Coca-Cola"; I don't understand what you are talking about. No,

(Deposition of Tony Giarraputo.)

sir; I won't sell substitutes for "Coca-Cola," for "Coca-Cola." No, sir; I did not think that they were trying to haul me up for selling a substitute for "Coca-Cola." You ask what I am scared of; I am not going to buy something for "Coca-Cola." You, ask if I am coming here to clear up my reputation; well, reputation is reputation—I came here to show you I don't want to buy a substitute to sell it for "Coca-Cola." You ask if I come here to show the Court that I haven't been swindling the Coca-Cola Co.; what you say, what do swindle mean? I wish you would talk plain English, I don't understand what you mean. You ask if I came to show the Court that I haven't committed any fraud on the Coca-Cola people; no, not the Coca-Cola people particularly. You ask what language I am talking; I suppose I talk the English language. Yes, sir; I came here for the purpose of clearing my own skirts of the charge of selling substitutes for "Coca-Cola." I understand your question and that is what I came here for; yes, sir. I came here to try to clear my own skirts, if I can, of that charge, and to make these people here see that I haven't been committing any fraud, that is what I came here for. I haven't been committing any fraud myself; yes, sir. I have been selling "Coca-Cola" all the way along. I keep my business in Dennison, Texas. Yes, sir; I came here to testify. Well, the Coca-Cola people brought me here. No, sir; they did not pay my way here, I paid my own way. No, sir; they are not going to pay it back to me. You ask what I am paying my own way to come

(Deposition of Tony Giarraputo.)

from Dennison here to testify for; of course, I am sorry, may be I talk wrong to you—is that your business whether I pay my way or not pay my way? No, sir; a detective has not talked to me about this thing. They called me up and wanted me to testify, say try to sell me “Koke” for “Coca-Cola” or if have been selling “Koke” for “Coca-Cola.” You ask if you are correct in understanding me to say that they [659] wanted me to testify whether I had sold any “Koke” for “Coca-Cola”; no, sir; it is not right. They asked when people called for “coke” what they meant, and I came all the way from Dennison at my own expense to testify that. Nobody asked me to come over except over the telephone. It was Mr. Harris who asked me to come over here. No, sir; I do not know the man that tried to sell me “Koke,” I had never seen him before that time and have never seen him since. He told me he wanted to sell me “Koke,” he called it “Koke.” They have a sample there in the bottle, but I tell them I don’t want to see no samples so that this talk to me didn’t result in anything. As I say, I bought five gallons of “Koke” about eight years ago. I didn’t buy it from this man, I bought it from this other man about seven or eight years ago, but that five gallons I didn’t serve to anybody. I kept it in the store-room. No, sir; I haven’t still got it; I told you I throw it away about two months ago. You ask what made me keep it eight years, and then throw it away two months ago; like you ask me a while ago, this is free country, and I don’t want to sell the “Koke,” it no taste right to me

(Deposition of Tony Giarraputo.)

and I don't sell it. You ask if I tried it after keeping it eight years; I tried it before and keep going on and never use it. I tried it once eight years ago, and I kept it nearly eight years before I destroyed it. I was in a small place once about seven or eight years and then go rent this big place I got now, is about five years, and, well, they send me a little "Koke" from the little place to the big place. Yes, sir; I mean I carried it with me and they were rotting the barrel and I threw it away about two months ago. You ask if I mean to say that the kegs got rotten; one thing and another, I didn't keep in the store, of course; I paid money for it and didn't use it. No, sir; I did not destroy it, because a man came to me and talked to me about it. No, sir; it is not a fact that I did not destroy it after a man came to me and talked to me about it. No, sir; I was not afraid to keep it. No, sir; I was not afraid they would catch me with it. No, sir; that is not true. I bought what was mine and I don't want to use it. Yes, sir; my customers are friendly people, friendly to me, like in the same family; if you don't have no friendly [660] customers in a small town how could you make a living? You ask if I know all these people; I know lots, of course. When they come to me and ask for "shot in the arm" I know they mean "Coca-Cola." and when they ask for "dope" I know they mean "Coca-Cola," and when they ask me for "Coca-Cola" I suppose they mean "Coca-Cola." I believe about ten per cent of my customers call for "Coca-Cola" and the balance call for "coke." Ninety per cent

(Deposition of Tony Giarraputo.)

call for "shot in the arm," "dope" and "coke." You ask if the name "Coca-Cola" is passing out and if I hear it now as often as I used to; well, they abbreviation a little bit. They abbreviate the name of "Coca-Cola" a little, yes, sir, exactly, and I suppose the abbreviation is taking the place of the name. yes, sir; I believe that is the case in Dennison where I live.

Deposition of W. H. Ramsey, for Plaintiff.

W. H. RAMSEY.

Direct Examination by General CRANE.

I am in the drug business in Dennison, Texas, and have been engaged in that business for about five years. Yes, sir; we have sold and dispensed "Coca-Cola" to the public. I have been in the bottling business about four years, but I guess I have been selling "Coca-Cola" about five years. You ask under what different names my customers call for it at the fountain; they call for "coke," "Coca-Cola," and "dope." I suppose fully two-thirds of them, at least, call for "Coca-Cola" as "coke." In response to such requests I would serve them "Coca-Cola" because I think that's what they want. None of my customers complain, when they call for "coke" and I serve them "Coca-Cola," that I am not giving them what they ask for, but I have had them to compliment the "Coca-Cola," though, I have had them to compliment it as being better than they had gotten at certain other places.

Cross-examination by Mr. DART.

No, sir; I do not serve any other drinks of that

(Deposition of W. H. Ramsey.)

kind, but "Coca-Cola." Yes, sir; out at Dennison, the name "Coca-Cola" is passing and going away—people talk about "coke" and "dope." I hardly ever hear the name "Coca-Cola" any more. [661]

Deposition of F. W. Hayden, for Plaintiff.

F. W. HAYDEN.

Direct Examination by General CRANE.

I reside at Pilot Point, Texas, where I have lived for about forty years, and am in the retail grocery business, in which business I handle "Coca-Cola." The orders now presented to me marked Plaintiff's Exhibit #162, which were identified by the witness Lupton, this morning, were written by me. They were addressed to the Coca-Cola Bottling Works and I was making orders for so many cases of "coke" in each one. By the use of the word "coke" I intended the Coca-Cola Bottling Company to understand that I wanted five cases of bottled "Coca-Cola." I presume I have been dealing with the Coca-Cola Bottling Company at Dallas and calling it "Coke," when I wanted "Coca-Cola," about eight years; I called it nothing else except "Coca-Cola." I would not use the name "Coca-Cola" very frequently. I usually wrote those matters hurriedly and abbreviated them and made them as short as possible. You ask if I wrote the word "coke" then as an abbreviation of "Coca-Cola"; yes sir. The Bottling Company never inquired of me what I meant by "coke," and my orders were never refused to be filled because of the fact that I wrote "coke" instead of "Coca-Cola."

(Deposition of F. W. Hayden.)

Cross-examination by Mr. DART.

In speaking of it in a commercial sense, I call it "coke." Well, yes; I can say that I hardly ever think of it as "Coca-Cola." I don't think of it as "Coca-Cola," because I have had customers to come in the store the last few years and ask whether I handled "koke" or "Coca-Cola," and in reply I always tell them I handle "Coca-Cola." I can't say that except for those casual inquiries the name "Coca-Cola" is dropping out and "coke" is being substituted for it; I don't think the name "Coca-Cola" is dropping out to any very great extent. With me "coke" is taking its place only to a very small per cent. My customers don't call for "coke," they call for "Coca-Cola." In calling for drinks most of them have abandoned the use of the word "coke." I would judge that it is the word "coke" that is passing and not "Coca-Cola," and that "Coca-Cola" is coming back to it's own. That is true as far as I know, as far as my trade is concerned. You ask if the [662] Company is not making a determined effort to get the trade to speak of it as "Coca-Cola"—to call it by its full name; the company has never said anything to me about the full name "Coca-Cola" as I know of. Yes, in advertisements I have seen "Coca-Cola"—don't call for it by nickname." I have seen in the company's advertisements where they are insisting on people calling for "Coca-Cola" by its right name, and not by substitute. I don't know as I can give you what I see in the advertisements word for word, but I have seen where it said

(Deposition of F. W. Hayden.)

simply in substance, "If you want 'Coca-Cola' call for 'Coca-Cola.' " You ask if it is my opinion that out in my section the public has met that suggestion, and the use of the nicknames is passing and "Coca-Cola" is being called for by its own name; the public is calling for "Coca-Cola" by its own name, usually, more so than it has been, and the nicknames are passing away.

Deposition of J. B. Smith, for Plaintiff.

J. B. SMITH.

Direct Examination by General CRANE.

You have exhibited to me orders purporting to have been signed by my firm, being part of Plaintiff's Exhibit #162, and you ask if I am a member of the firm that made those orders; yes, sir. When those orders were made I was in the restaurant, confectionery and cold drink business at Tioga, Texas. We were there nearly four years and came to Pilot Point on the 27th of last August, where we have been doing business every day since. I recognize the handwriting in which those orders were written. They were written by Mr. Sundley, who is my partner. You ask if I knew what he was ordering when he was ordering "coke"; he was ordering "Coca-Cola,"—he might have wrote it "coke," but he was ordering "Coca-Cola." No, sir; we do not handle any "Koke" and have never handled it. You ask if we ever had any of these orders turned down by the Coca-Cola Company because that concern was not handling "Koke," or if it filled these orders with something else; we

(Deposition of J. B. Smith.)

just understood them, and he understood them, and we always got our orders filled. It came "Coca-Cola." When we would order four cases of "coke" they would supply it by four cases of "Coca-Cola." If he wrote it "coke" why we meant it for "Coca-Cola," just shorter meter, you know. [663] The letter is always addressed to the Coca-Cola Bottling Company.

Cross-examination by Mr. DART.

Pilot Point is about sixty miles from here, I guess, something like that. The ticket costs \$2.95 a round trip, and that's what I was going by. You ask whether I came here in answer to a subpoena or whether I came here in answer to a request; I came here in answer to a request from the Coca-Cola Bottling Works, over the telephone. They said they wanted us to come to Dallas to-day. Mr. Hayden came over and told me that he got a 'phone that they wanted us to come and about that time they said they had a 'phone for me and I went to the office and they said it was the Coca-Cola Bottling Works. They never did tell us what they wanted us for, but they said they wanted us to be sure to come to-day. I didn't know anything about what they had on tap at all. The way I happened to find my way to this office is that I went to the bottling works and they brought us here. You ask if I am accustomed to obeying orders that way from the Bottling Works; it's the first time they have ever called us. They haven't paid my way yet, but I suppose they will do it. I didn't know that I was to be a witness in this

(Deposition of J. B. Smith.)

case. At Pilot Point we are carrying on a soft drink business; we sell milk shakes, "Coca-Cola,"—signs in the house say "Coca-Cola Bottling Works; call for it by the right name," but nearly every one says "give me a 'coke,' " and it's branded on the bottles at Pilot Point. You ask if any one calls for "Coca-Cola" any more; oh, once in a while a man comes in and says "give me a bottle of 'Coca-Cola' " and the sign up there like the company furnished says "call it by the right name." Once in a while a man calls for a bottle of "Coca-Cola"; there is supposed to be about half of them say "give me a bottle of 'coke.' " No, sir, they do not call it "dope," they just say "coke." Nobody out in the country has ever called it "dope" to me. At Tioga I have had them say "give me a shot in the arm"—they mean "Coca-Cola," though, of course. We have never sold anything called "Koke" or any other drink as a rival to "Coca-Cola"; we have never sold nothing but "Coca-Cola." When we used to be at Tioga, when we had that fount—we had a goose-neck and one of these little pump fountains—and they tried to sell us "Koke" for that and we never would buy it and the bottling works [664] at Whitesburg tried to sell us "Gay-Ola"—said it was the same as "Coca-Cola," but we never would buy that. So we have never handled anything but "Coca-Cola"; I call it "coke" myself, but we have never handled anything but "Coca-Cola"—the name is even branded that way on the bottle,—"Coca-Cola."

Deposition of Mrs. C. E. Flagg, for Plaintiff.

Mrs. C. E. FLAGG.

Direct Examination by Mr. ROGERS.

I have a confectionery store and floral shop at the corner of Jefferson and Marsello Sts., Oak Cliff, which is a suburb of Dallas, Texas. Yes, sir; I had an interview at one time with a salesman selling a product which he called "Koke." He wanted to sell me this "Koke" for ninety cents a gallon. He said it would be a great saving as "Coca-Cola" would cost me (\$1.50) a dollar and fifty cents; I told him I didn't want it. He said you couldn't tell the difference between "Coca-Cola" and "Koke" and also that the people couldn't tell the difference between them. I told him when people asked for "coke" that they wanted "Coca-Cola" and he said that they didn't, that they wanted "Koke"; he said, "Of course, when people come in and ask for 'coke' they want 'Koke' " and that we were supposed to serve "Koke"; and I said, "No, when a person asked for 'coke' it's just a short way of asking for "Coca-Cola.'" No, I did not buy any "Koke" from him. You ask if that is substantially what occurred at that interview; well, he got pretty angry and then he came back the second time and next time he came back I just simply told him I didn't want it. Those interviews happened about a year ago.

(There was no cross-examination of this witness.)

Deposition of Peter Camarinos, for Plaintiff.**PETER CAMARINOS.**

Direct Examination by Mr. ROGERS.

I am in the confectionery business at McKinney, Texas. I sell soft drinks including "Coca-Cola" and have been doing so for fifteen months. You ask if I know how people ask for it when they want "Coca-Cola"; they say lots of times "Coca-Cola," "coke," "dope," "shot in the arm," "hop," sometimes. I understand by requests for any of those things that they want "Coca-Cola" and "Coca-Cola" is what I always furnish. I had a call from a man representing the Koke Company here in Dallas—I couldn't remember exactly—two or three [665] months ago. He had some "Koke" which he offered to sell me. Tell me sell it cheaper than "Coca-Cola" and make more money than I could by selling "Coca-Cola." You ask if he said I could sell it for "Coca-Cola"; yes, sir. You ask if he said it was like "Coca-Cola"—couldn't tell the difference, anything of that sort; no, he say people can't tell difference.

Cross-examination by Mr. DART.

No, I don't know the name of that man, nor did I ever see him before he called on me. I never saw him but once or twice. Yes, sir, he said to me that it was as good a drink as "Coca-Cola" and he says I can sell it for "Coca-Cola." Yes, sir; I am sure he told me I could sell it for "Coca-Cola." You ask me if that's why I refused to buy it; well, of course, I wouldn't buy nothing that ain't true, and, really, I

(Deposition of Peter Camarinos.)

been selling "Coca-Cola" last six or seven years, and am satisfied. No, sir; I don't know anything about "Koke," the drink. I didn't even look at it. He says "Koke" and I tell him to let me alone. I did not buy it, and never have sold it. I can't remember the name of the man who talked to me, I never asked him, and I can't remember when the conversation occurred except that I believe it was about three months ago, the last time. I didn't take his name. Yes, sir; I do a large "Coca-Cola" business. You ask how much of it is called for under the name "Coca-Cola"; well, they call it "Coca-Cola" and they call it "coke" and "dope" and "hop" and "shot in the arm." Pretty near every one calls for it under those names, so that the name "Coca-Cola" is not often used. You ask if it is passing out of use with us; well, good many people call "Coca-Cola," but I have got people call it "coke," "dope," or something like that. But the great bulk of my trade calls for it under those various names.

Deposition of B. N. Harris, for Plaintiff.

B. N. HARRIS.

Direct Examination by Mr. ROGERS.

I am salesman for the Coca-Cola Co. I live in Oklahoma City and Dallas—I have two headquarters. Yes, sir; I can identify the card now shown me starting "Dallas, Texas" and purporting to be signed "The Koke Company." I sent this card from McAlester to the Coca-Cola Company in Atlanta, Georgia. [666] I got it from the McAlester Candy

(Deposition of B. N. Harris.)

Kitchen, which concern gave it to me. (Plaintiff here tendered and offered in evidence the card referred to as Plaintiff's Exhibit #154.)

[There was no cross-examination of this witness].

(It is stipulated and agreed between Counsel that the witness Camarinos is a Greek.)

Deposition of T. J. Britton, for Plaintiff.

T. J. BRITTON.

Direct Examination by Mr. ROGERS.

I am in the retail drug business at the corner of Elm and Ackard Streets, Dallas, Texas, in which business I have been engaged 17 years, this October, all the time in Dallas. During all of this time I have operated a soda-fountain in my store. Yes, we dispense "Coca-Cola." Yes, sir, "Coca-Cola" is a very popular drink and is extensively advertised. You ask how people who come to my fountain indicate to me that they desire the product of the "Coca-Cola" Company; well, I should judge that about fifty per cent of them call it "Coca-Cola," the balance of them call it "coke" and "dope"—"coke" and "dope" are the principal names. When a man asks at my fountain for "coke" or "dope" I understand that he means "Coca-Cola" and I always supply "Coca-Cola" in response to such a request. I have never had it rejected as not what was asked for. I don't know how long "coke" and "dope" has been used as designations of "Coca-Cola"—oh, in the last six or seven years, I judge, maybe longer, I don't know. Yes, sir, I have known the name "coke" as

(Deposition of T. J. Britton.)

a nickname for "Coca-Cola" about the same length of time. I recollect having a representative call upon me trying to sell me the product "K-O-K-E" made by the Koke Company of Texas. I think it was about three years ago that he came in the store and tried to sell me some "Koke," and, of course, the argument that they all put us is that it can't be told from "Coca-Cola," and I think it was cheaper—I think he offered it at about a dollar a gallon, and I told him, no, I didn't care for it, I didn't dispense anything but the genuine "Coca-Cola" and had never handled any substitute for it; and, in the course of the conversation, he intimated to me that when I sold a man "Coca-Cola" when he called for "Koke" that I was substituting, and I immediately told him that he would have to withdraw from my office, that I didn't have time to talk to a man that would advance that kind of an argument. [667] Yes, sir, the public, when asking for "Coca-Cola" at my fountain, prior to that time, had been asking for it under the name "coke."

Cross-examination by Mr. DART.

No sir; I don't know the name of the gentleman who called on me in regard to it. Well, I may have seen him before, he may have called on me a time or two, I don't know. Yes, sir; when he began to argue as to the right of his proposition, I shut off the argument and ordered him out—when he got to the point that I was substituting, I did. I cut him off when he began to argue as to the right of his position. Previous to that time we got in a little argument,

(Deposition of T. J. Britton.)

and I just simply told him we had not been selling "Coca-Cola" under the name of "Koke," when people came in and called for "coke," we had been selling "Coca-Cola" for some little time, and his company were trying to steal the thunder of the Coca-Cola Co. That was my argument to him, and he was just trying to combat that argument. You say that when he began to advance the argument in support of his position that he had the right, then I stated that I had no time to talk to him further; when he told me I was substituting, when a man came and called for "Koke" and I gave him "Coca-Cola," that I was substituting, I told him I didn't have any further time to talk to him. I have sold nothing but "Coca-Cola" all my life. Well, I don't know whether my establishment is known in this town as one of the prominent "Coca-Cola" establishments or not; I leave that to you to answer. I do, as a matter of fact, do a very large "Coca-Cola" business, and have done it for years, and it's a very valuable business to me and I wouldn't do anything to jeopardize that business willingly. I think the Coca-Cola Company, through their system of advertising, has made it possible for fountains to keep open, where they otherwise would have closed down. No, sir; I would not willingly take on a rival to "Coca-Cola" that would jeopardize my interests. Yes, sir; my interest is to keep the business and keep the "Coca-Cola" business I have, and, besides, I have a friendly feeling towards "Coca-Cola." No, sir; I personally do not still serve at my foun-

(Deposition of T. J. Britton.)

tain. Frequently I go to tables and take orders for the boys, when they get busy. I have gathered a general opinion as to the percentage of people who call "Coca-Cola" by those different names by the supervision [668] I exercise over my store, but not from personal every-day contact. I judge that about fifty per cent call for it as "Coca-Cola" and the remainder by various names. I have heard the names "coke" and "dope"—mostly "coke," they say, "give me a 'coke,'" There are some other names I have heard that I did not mention, but I think "coke" and "dope" are the principal ones—mostly "coke."

Redirect Examination by Mr. ROGERS.

Yes, sir; it is a common thing for a well known and widely advertised article to be nicknamed. They come in and call for Fatima cigarettes for instance, "give me a bag of fatty ma's." You ask if I hear them call for a package of "Bull"; yes, sir—"give me a sack of 'Bull,'" they mean by that "Bull Durham" and Piedmont cigarettes, they call for "Pieds" and in calling for Hamilton-Fish cigars they say, "give me a whale"—oh, I don't know, a lot of those things like that.

Recross-examination by Mr. DART.

Yes, sir; I handle all these things I am speaking about in considerable quantity. No, I guess there is not very much difference between "Fatima" and "Fatty-Ma" in the sound to the ear, and it isn't a very far cry to call "Bull Durham," "Bull." You

(Deposition of T. J. Britton.)

say you are not familiar with the Hamilton Fish Company and ask if there is any reason why one should call that "a whale"; well, it's a big fish, you know. I don't know whether that is a general call or an occasional call, a good many customers come in and call for it that way. Yes, sir; I am a practical druggist.

Deposition of B. W. Fuller, for Plaintiff.

B. W. FULLER.

Direct Examination by General CRANE.

I reside at 2521 Meyers Street, Dallas, Texas. I am a soda dispenser and have been for about eight years. I am with the Vienna Ice Cream factory, Kirby Drug Store, and the Palace Store. I worked for the Kirby Drug Store at Main and Ervay Streets for three years. My customers buying "Coca-Cola" call for it as "coke," "Coca-Cola," "dope," and "shot." About nine out of each ten call for it under the name of "coke," and in response to such requests I serve "Coca-Cola." [669] "X. 12. What did you understand your customers to be calling for?" "A. 'Coca-Cola,' the majority of them wanted 'Coca-Cola.'" You ask if they complained when I served them "Coca-Cola"; yes, sir, they complained when I gave them "Koke." They complained—I say they meant "Coca-Cola." The Kirby Drug Company at one time dispensed "Koke" over its counters. They carried it exclusively as long as they lasted,—the last month or so while I was there. You ask if they

(Deposition of B. W. Fuller.)

sold it as "Koke" or as "Coca-Cola"; they sold it as both. If a man came in and called for "Coca-Cola" they served him "Koke"—they didn't have anything else to serve him. Sometimes they told him what they were selling, told him it was "Koke," and sometimes they didn't—supposed to tell it along towards the last, they were supposed to tell him it was "Koke." You say you are not trying to find out what they were supposed to do, but whether "Koke" was sold by the Kirby Drug Company as "Koke" or as "Coca-Cola"; as both—first it was sold as "Coca-Cola," as long as it lasted, and then they sold it as "Koke." It must have been about a month, I guess, that they sold it as "Coca-Cola." No, sir; they did not have any "Coca-Cola" in stock when they were selling them "Koke" for "Coca-Cola." One reason why I quit them was on that account, I had so much trouble about the "Coca-Cola" customers. They kicked on it. The customers that came in there, one thing would bring on another, about what the drink was, that it wasn't right, that they wanted "Coca-Cola" and couldn't get "Coca-Cola" and got "Koke"—they would be dissatisfied. You ask why, then, did I quit, and why I could not have told them when they were asking for "Coco-Cola" that I was serving them "Koke"; I did tell part of them and they all quit. The customers were dissatisfied with my telling them that it was "Koke." That was partly the cause of my quitting the store. No, the proprietors of the store didn't make no objection. Yes, sir; they wanted me

(Deposition of B. W. Fuller.)

to sell the "Koke" as "Coca-Cola," just before I quit there—they quit telling people it was "Coca-Cola" and told them it was "Koke"; a man came in there and asked me for "Coca-Cola," I would tell him it was "Koke"; well, no soda dispenser wants to tell a man he hasn't got "Coca-Cola" and has only got "Koke," and so I quit them. [670]

Cross-examination by Mr. DART.

During the time I was working in this "Koke" line, J. R. Blakeney was my boss. When I had calls for "Coca-Cola" and told the customers we were selling "Koke" they didn't want "Koke." I did tell them we were selling "Koke," some of them I did, yes. You ask if my boss did not tell me to tell customers that we were selling "Koke"; that's along toward the last part, he told me to tell them I was selling them "Koke." No, sir; he never jumped on me about saying it wasn't "Koke." No, sir; he never quarreled with me about not telling them it was "Koke" instead of "Coca-Cola." Along towards the last I served it as "Koke" to those people, but at first I served it as "Coca-Cola." You ask if I then had some complaint made to me by my boss; he told me to sell "Koke" for "Coca-Cola" and that's all the complaint I had. Yes, sir; I charge my boss Mr. Blakeney with telling me to sell "Koke" for "Coca-Cola." When they asked for "Coca-Cola" I sold them "Koke" because I didn't have anything else to sell, and then, when they complained of it, I told them it was "Koke" I was selling. Towards the last I sold it as "Koke" to them

(Deposition of B. W. Fuller.)

and didn't pretend it was "Coca-Cola." When I left the company Mr. Blakeney was there, and my last service there I was serving "Koke" pure and simply to my customers and they knew it, and that wasn't as popular as "Coca-Cola."

Deposition of Sam Friend, for Plaintiff.

SAM FRIEND.

Direct Examination by Mr. ROGERS.

I am 25 years old and am employed by the Coca-Cola Co. Before I was employed by the Coca-Cola Company I was employed by the Pinkerton National Detective Agency. Recently I have made an investigation for the Coca-Cola Company with respect to the trade meanings of the names "coke" and "dope." In making this investigation I traveled through the states of Georgia and Texas, visiting seventy-two towns; namely, Griffin, Barnesville, Macon, Conyers, Social Circle, Covington, Monroe, Winder, Lawrenceville, Buford, Roswell, Gainesville, Toccoa, Royston, Athens, Elberton, Madison, Greensboro, Washington, Thomson, Warrenton, Milledgeville, Jonesboro, Locust Grove, Stockridge, McDonough, Jackson, Flovilla, Monticello, Eaton, Montezuma, Marshallville, [671] Americus, Dawson, Ellaville, Cuthbert, Buena Vista, Albany, Ashburn, Tipton, Moultrie, Douglas, Fitzgerald, Ocilla, Sylvester, Cordele, Ft. Gaines, Blakely, Bainbridge, Adel, Donaldsonville, Thomasville, Pelham, Camilla, Meigs, Quitman, Boston, Valdosta, Waycross, Georgia, Dallas, Houston, San Antonio, New

(Deposition of Sam Friend.)

Braunfels, San Marcos, Austin, Taylor, Temple, Bolton, Ennis, Corsicana, Texas. Investigation which I made was as follows: I would go up to the soda-fountain and ask for a "Coca-Cola" and would note the container from which the syrup to make the drink served me was drawn; I would then remain around the fountain for different periods of time, ranging from twenty to fifty minutes and observe the calls for "dope," "coke" and "Coca-Cola," observing from what container in the fountain the syrup to make the drinks served in response to those calls was drawn. Later in the day I would again call at the same fountain for a "dope," observe the spigot from which the syrup was drawn to make that drink, and, also, the containers from which the syrup was drawn to make the drinks of other customers asking for "dope," "coke" and "Coco-Cola." Still later in the day, or the next day, I would again call at the same fountain and ask for a "coke," making the same observations.

In the majority of cases—in all cases, I might say—at each soda-fountain that I visited the syrup to make the drinks served to me in response to my requests for "Coca-Cola," "coke" and "dope," and the syrup to make the drinks served to the customers in response to their requests for "dope" and "coke" and "Coca-Cola," was all drawn from one and the same container in the fountain. In the following tabulation the first column indicates the name of the town, the second the name of the store, the third the length of time during which I stayed about the foun-

(Deposition of Sam Friend.)

tain and observed the calls of customers, the fourth the number of calls for "Coca-Cola," the fifth the number of calls for "dope," the sixth the number of calls for "coke," during the period of my observation. (*) indicates that the container was marked "Coca-Cola." [672]

		Hr.	Min.	CC.	D.	K.
Griffin, Ga.	*Brooks County Drug Store	1	25	7	9	
	*Carlisle & Ward		55	5	7	
	Derrick Drug Co.		55	2	6	
	R. N. Mitchell Drug Store		35	6	5	
Barnesville	J. H. Blackburn	1	10	3	6	
	Barnesville Drug Co.		55	4	5	
	Anderson Drug Co.		50	3	6	
	Barnesville Drug Co.		55	4	3	
	Anderson Drug Co.		35	2	4	
	J. H. Blackburn Drug Co.		40	3	5	
Macon	Saunders Drug Co.	1	20	5	11	
	Chapman's Drug Store	1	20	9	13	
	Taylor & Bayne Drug Co.	1	15	9	11	
	J. H. Lamar Drug Co.	1	15	5	6	
	Murray & Sparks Drug Co.	1	30	14	5	
	King & Oliphant Drug Co.	1	05	8	8	
	L. C. Small Drug Co.	1	20	5	11	
	Saunders Drug Co.		20	2	2	
	Chapman's Drug Store		15	1	2	
Conyers	Taylor & Bayne Drug Co.		20	1	3	
	W. H. Lee Drug Co.	1	20	3	6	
	Street's Drug Store		55	3	4	
Social Circle	Knox Pharmacy	1	25	5	3	
Covington	Smith's Drug Store	1	20	3	3	
	City Pharmacy		50	4	12	
	C. C. Brooks	1	25	4	9	
	Carmichael Drug Co.	1	30	5	9	
Monroe	W. S. Stovall	1	25	4	7	
	Chaffin Drug Co.	1	05	6	7	
	G. W. DeLapieriere & Sons	1	15	4	6	
Winder	J. T. Wages' Drug Store		45	3	7	
	L. E. Herren's Drug Store	1	15	2	6	

		Hr.	Min.	CC.	D.	K.
Lawrenceville	*Ezzard-Montgomery Drug Co.	1		2	5	
	Kelley Drug Co.	1		5	6	
Buford	Buford Pharmacy	1	10	3	3	
	Prater & Murphy	1	10	3	4	
	J. T. Rowe Drug Co.		50	2	3	
	Roswell Drug Co.		55	2	4	
Roswell	J. G. Power Drug Store	1	10	2	3	
	Piedmont Drug Co.	1		3	7	
Gainesville	Robertson Drug Co.	1	20	3	4	
	Stringer's Ice Cream Parlor	1	15	4	7	
Toccoa	Barron Bros. Ice Cream Parlor	1		3	4	
	*Peoples Drug Store	1	15	3	5	
Royston	Ridgeway Drug Co.	1	30	5	5	
	Royston Drug Co.	1	20	4	4	
Athens	*Poss' Place	1	25	5	10	
	*Bland Bros.	1		2	4	
	*Costa's Place	1	05	7	15	
	*M. & W. Cigar Co.	1	15	5	8	
Elberton	*Herndon's Drug Store	1	10	4	7	
	*Cleveland Drug Co.	1	05	4	6	
	Rapley & Manley	1	15	4	5	
Madison	*Atkinson Drug Co.	1	45	5	2	
	*Tunnison's Phar.	1	35	4	5	
Greensboro	*Rice Drug Co.	1	30	6	4	
	Armor Drug Co.	1	05	4	5	
Washington	*Moore Bros.	1	30	2	4	
	J. B. Green	2	10	3	6	
Thomson	A. J. Matthews	1	45	3	4	
	*Gibson Drug Co.	1	25	4	5	
Warrenton	*Evans Drug Co.	1	30	2	4	
	*Baker's Soft Drink Stand	1	35	3	7	
Milledgeville	*Culver & Kidd	1	15	3	6	
	Barrett's Drug Store	1	10	2	6	
	Ennis Drug Co.	1	30	5	5	
Jonesboro	Cousins Drug Co.		50	2	2	
Locust Grove	Locust Grove Drug Co.		50	2	2	
Stockbridge	Ward Drug Co.	1	45	1		
McDonough	*McDonough Drug Co.	1	35	3	2	

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		Hr.	Min.	CC.	D.	K.
McDonough	*Horton Drug Co.	1	25	2	3	
Jackson	*The Owl Drug Co.	1	20	5	4	
	*Slaton Drug Co.	1	15	6	5	
	Woods & Carmichael Drug Co.	1	15	4	9	
Flovilla	*A. F. White Drug Co.	1	25	4	8	
Monticello	Furse Drug Co.	1	40	6	6	
	*Jordan Drug Co.	1	40	5	9	
Eatonton	*Belvin's Drug Store	1		3	3	
	*Central Pharmacy	1	20	2	4	
	*D. L. Thomas Drug Store	1	05	4	4	
Montezuma	*A. C. Richardson & Son	1	25	3	4	
	*Read's Drug Store	1	25	3	6	
	Walker Drug Co.	1	15	5	4	
Marshallville	*Booton's Drug Store	1	30	1	2	
Americus	Howell & Prather	1	30	4	10	
	Hook's Drug Store	1	45	5	11	
Dawson	*Tanner Drug Co.	1	15	4	5	
	*City Pharmacy	1	25	4	7	
	*Dawson Drug Co.	1	20	1	5	
Ellaville	*City Drug Store	1	30	1	1	
Cuthbert	Moore Drug Co.	1	20	3	4	
	*Zuber's Soft Drink Stand	1	15	6	11	
Buena Vista	*City Drug Store	1		2	6	
Albany	*Albany Drug Co.	1	20	5	9	
	*Royal Ice Cream Parlor	1	15	8	9	
	Cash Drug Store	1	15	7	12	
	Bell Drug Co.	1	05	7	12	
Ashburn	*Ashburn Drug Co.	1	30	2	6	
	*Parker Drug Co.	1	35	4	7	
Tipton	Mills Drug Co.	1	35	4	7	
	*Peoples Ice Cream Parlor	1	15	5	9	
	Brooks Drug Store	1	20	3	7	
Moultrie	*Williams Drug Co.	1	25	2	5	
	Watson Drug Co.	1	15	2	7	
	Hawkins Drug Store	1	05	5	9	
Douglas	Farmer's Drug Store	1	25	3	7	
Douglas	*Sapps Drug Store	1	15	6	6	
	*Union Pharmacy	1	30	3	6	
Fitzgerald	*Goodman Drug Co.	1	35	1	4	
	*Dixie Pharmacy	1	15	1	6	
	National Drug Co.	1	30	3	6	

		Hr.	Min.	CC.	D.	K.
	Adams Candy Kitchen	1	05	1	6	
Ocilla	City Drug Store		50		2	
	Ocilla Pharmacy	1	20	2	6	
Sylvester	Cash Drug Store	1	10	1	3	
	*Bell & Lee Drug Co.		55	2	1	
Cordele	*Cash Drug Store	1	35	3	6	
Cordele	*Williams Drug Co.	1	15	5	9	
	*Steab's Drug Store	1	15	3	9	
Ft. Gaines	*People's Drug Store	1	30	3	11	
	John Brown's Place	1	20	8	12	
Blakely	Morris Drug Co.		50	1	3	
	*Pryer's Pharmacy		50	1	3	
Bainbridge	Oak City Drug Co.	1	35	1	5	
	Bainbridge Pharmacy	1	20	1	4	
	Mills Drug Store	1	15	7	12	
Adel	Adel Drug Co.	1	30	3	6	
Donaldsonville	Palace Pharmacy	1	15	1	4	
Thomasville	*Peacock & Nash Drug Co.	1	10	3	8	
	City Drug Store	1	05	4	9	
	Ingram Drug Co.	1	25	6	12	
Pelham	Hill & King Pharmacy	1	30	2	6	
	Consolidated Drug Co.		50	2	6	
Camilla, Georgia	Camilla Drug Co.	1		3	2	
	Stripling's Pharmacy		5	4	3	
Meigs	The Rexall Store		45		1	
	Iselar's Pharmacy	1			1	
Quitman	Horn Drug Co.	1	15	2	5	
	*Savoy Soft Drink Stand	1	10	3	8	
	Brooks County Drug Co.	1	20	3	5	
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Boston	City Drug Co.	1	15	1	4	
Valdosta	Vinson Drug Co.	1	10	4	8	
	*Ingram Drug Co.	1	20	5	10	
	Dunnaway's Pharmacy	1	35	1	5	
	Barnes Drug Co.	1	15	6	9	
	Mackey Soft Drink Stand	1	10	4	9	
	Bergstrom & Newberg	1		6	10	
Waycross	*Mills Drug Co.	1	5	5		
	*Spear & Register Drug Co.	1	10	3	6	
	Cherokee Pharmacy	1	15	3	4	
Dallas, Tex.	Cecil V. Rogers Drug Store	1	20	8		13

	Hr.	Min.	CC.	D.	K.
*Britton's Drug Store	1	15	11		11
*Dimitri & Mimich	1	20	15		24
*St. George Drug Store	1	15	7		15
*Southland Pharmacy	1	25	21		39
Thomas' Candy Kitchen		40	7		11
Thomas' Candy Kitchen		50	8		14
Moss' Pharmacy		30	2		5
Princess Confectionery Store		30	3		
Dallas, Tex. Marvin's Drug Store		35	5		7
Tate Drug Store		30	4		2
Moss' Pharmacy No. 2		30	1		2
*Ewer Drug Co.		35	1		3
Hippodrome Confectionery		25	3		4
*J. A. Skillern & Sons		25	2		5
Central Drug Store		30	1		1
*Moore's Commerce Pharmacy		30	2		1
*Capitol Drug Store		45	2		2
Burlington Drug Store		30	1		3
*Treadwell Drug Co.		45	3		2
Dallas Pharmacy		30	3		1
*J. A. Skillern & Sons #3		30	3		2
*Oak Cliff Pharmacy		30	2		1
Furlow Linder		25	1		3
Red Cross Pharmacy		25	3		1
Arcade Confectionery		30	1		3
Texas Cigar Co.		30	4		4
*Washington Ave. Pharmacy		30	1		2
Cormick Drug Co.		30	2		3
J. A. Skillern #2		20	2		4
*Atha's Place		25			2
Cossu's Place		25	1		3
Saeger Bros.		25	4		8
Craig's Place		20	1		
Imperial Pharmacy		20	1		3
*Rhinelander's Pharmacy		30	2		4
*Allen's Pharmacy		30	2		1
*Stovall's Pharmacy		20	1		3
*Wimans Pharmacy		25	2		1
Grand Ave. Pharmacy		25	2		1
*Cantor's Pharmacy		30	2		2
Second Avenue Pharmacy		30			1

		Hr.	Min.	CC.	D.	K.
	*Smoot & Crow Drug Store	35	1			1
	Fair & Park Drug Store	25	1			2
	*Guy's Pharmacy No. 2	35	1			2
	*McGwier's Pharmacy	25	1			1
	*Robertson Drug Co.	25	3			2
	Wilson Drug Store	15	1			1
	Bindley's Pharmacy	15				1
	Brandley's Pharmacy	15	2			3
	*Clayton's Pharmacy	20	1			1
	*Center's Drug Store No. 2	20				1
	*Kirby's Drug Store	20	1			2
	*Green's Drug Store No. 1	20	2			2
	*Green's Drug Store No. 2	20	1			1
	English Pharmacy	15	2			3
	Eagle Pharmacy	20	1			2
	McFarland's Drug Store	15	2			2
	*Tremont Pharmacy	15	1			2
	Justice Pharmacy	15	2			2
[675] Dallas, Tex.	Weichsel Pharmacy	20	2			2
	High School Drug Store	15	2			2
	Medlock's Pharmacy	15	1			1
	*Springfield Drug Store	20	2			2
	E. J. Rust & Bros.	15				1
	*Clark's Pharmacy	15	1			1
	Linder's Pharmacy	20				1
	Guy's Pharmacy	15	2			2
	*Anderson Drug Co.	25			1	5
	*Woods-Ehrhart Drug Co.	25	2			3
Houston, Tex.	McFarland's Pharm.	30	2			2
	Bennett's Phar.	30	1			2
	*South End Pharmacy	35	1			2
	Hoeneke Pharmacy	40	2			2
	Hoeneke Pharmacy No. 2	30	1			1
	*Anita Pharmacy	30	1			2
	Ridley's Pharmacy	30	2			1
	*City Drug Store	20	1			2
	*Manhattan Confectionery	40	2			2
	*Public Drug Store	30	2			4
	The Rouse Drug Co.	30	2			6
	*Rouse Drug Co. No. 2	35	3			4

	Hr.	Min.	CC.	D.	K.
	Rice Annex Drug Store	25	5		3
	Pappas Bros. Confectionery	30	6		10
	Burgheim's Phar.	25	2		4
	*Hendrix Phar.	20	1		2
	Grasse Drug Co.	35	1		2
	Spears Drug Store	25	1		1
	*Magnolia Phar.	25	1		2
	*Cockrell's Phar.	25	2		3
	*Post Office Pharmacy	35	2		3
	*Post Office Pharmacy	35	4		2
	*Wicks & Co.	30	2		8
	Olympia Candy Kitchen	30	5		12
	Clay & Gilpin	25	1		2
	*Griffin's Pharmacy	20	1		1
	*Keisling Pharmacy	30	3	1	5
	*Cockrell's Pharmacy	25	1		2
San Antonio	Mulburn Bros. Pharmacy	35	2		5
	*Busy Bee Candy Kitchen	25	2	1	5
	Summers Drug Store No. 1	25	3		4
	Summers Drug Store No. 2	25	1	2	3
	*Whisenant Drug Co.	20	6		4
	Burns Drug Store	30	2		4
	*Pfeiffer's Cut-Rate Drug Store	25	2	1	2
	*George Keen's Drug Store	30	5		4
	*Twentieth Century Drug Store	30	0	1	1
	*Kalteyer & Sons	35	1		1
	Taliaferro's Phar.	20	2		3
	*Marshall Johnson's Pharmacy	30	1		1
	Chapin's Phar.	15	1		1
	Dreiss Drug Store	30	2	1	2
	*Quillian Confectionery	25	4	1	3
	*Palace of Sweets	25	1		1
	Wagner Pharmacy	25	5		3
	*Kalteyer's Phar.	25	2		2
	*Fisher's Drug Store	30	1		3
	Crutcher-Threadgill Phar.	30	1		1
New Braunfels	*Richer's Phar.	30	1		1
	Sippels Confectionery	45	1		3
	Walter Sippels Confectionery	30	1		3

		Hr.	Min.	CC.	D.	K.
San Marcos	Story's Confectionery	50	2			2
	Vinson's Pharm.	25	1			2
	McIntyre's Confectionery	30	2			3
[676]						
Austin	*Van Duris Confectionery	30	2			4
	*Gates & Cornwell Drug Store	35	1			3
	Crescent Confectionery	30	2			5
	Griffith Drug Co.	30	3			4
	Van Smith's Phar.	35	4			6
	*Johnson's Phar.	25	1			2
	Jeff. S. Wimbish Phar.	25	1			1
Taylor	Lyle's Phar.	45	1			2
	*Metropole Confectionery	35	2			2
	Friend's Place	30	3			3
	*Dalliet's Phar.	30	1			2
	Olympia Confectionery	35	3			6
Temple	Mississippi Dept. Store	45	5			8
	*Power's Drug Store	25	1			2
	*Square Drug Store	25	2			2
	*Zacharias Confectionery	30	5			3
	Willis & McLean	25	2			2
	C. L. Reynolds Drug Store	40	4			7
Belton	Melot Bros.	30	2			4
	Olympia Candy Kitchen	30	2			6
	Head Drug Co.	40	2			2
Ennis	*Castellaw Drug Co.	25	2			4
	*John L. Stevenson Drug Store	20	2			1
	*Ennis Drug Co.	35	2			2
	*Glover & Guthrie Drug Co.	25	1			3
	Hesser's Phar.	25	2			4
	*Cunningham's Confectionery	30	1	1		2
Corsicana	Commercial Drug Store	25	2			2
	Owen Matthews Drug Store	35	1			3
	Harper & Inabnit	30	2			3
	Lawson Colson's Drug Store	30	1			3
	Beaton & Bagby	30	1			2
	*John Merchison	25	2			2
	Fifth Avenue Confectionery	25	1			3

(Deposition of Sam Friend.)

At a number of stores visited I made consumers' tests—that is to say, I instructed the dispenser on duty to ask each and every person calling at the fountain for either "coke" or "dope" what he meant and I stationed myself in the vicinity of the fountain where I could hear the requests of the customers, the questions of the dispenser, and the replies of the customers thereto. At the fountain at the following places during the time specified in my presence every person using the word "coke" or "dope" in ordering was asked by the dispenser what he meant and in each instance the answer was "Coca-Cola." Following is a tabulation of the consumers' tests so made. The first column indicates the name of the town, the second the name of the store, the third the name of the dispenser who put on the test, the fourth the length of time during which the test was conducted, the fifth the number of persons calling for "dope" and the sixth the number of persons calling for "coke." [677]

		Dispenser.	Hr.	Min.	D.
acon, Ga.	Saunders Drug Co.	Spencer, Phillips	7	30	30
inesville	Piedmont Drug Co.	Jones	4	30	15
yston	Ridgeway Drug Co.	Bennett	4		11
hens	Poss' Place	Smith	5	30	36
berton	Herndon's Drug Store	Maxwell	3	30	16
adison	Atkinson Drug Co.	Akinson	4	30	8
eensboro	Rice Drug Co.	Crumley	4	30	10
ashington	Moore Bros.	Corry	4	30	9
omson	Gibson Drug Co.	Johnson	3	30	10
arrenton	Baker's Soft Drink Stand	Mangrine, Jr.	3		8
lledgeville	Ennis Drug Co.	Benford	4		14
Donough	Horton Drug Co.	Elliott	3		8
ekson	Woods & Carmichael Drug Co.	Maddox & Furlow	3		14
ovilla	A. F. White Drug Co.	Harding	3	30	15
onticella	Jordan Drug Co.	Robinson	3	30	11
stonton	Belvin's Drug Store	Wheeler	2	30	14
ontezuma	Walker Drug Co.	Walker	3	30	22
nericus	Hook's Drug Store	Wheeler	4	30	18
awson	Dawson Drug Co.	McDowell	3		9
thbert	Zuber's Soft Drink Stand	McDaniel	3		14
bany	Bell Drug Co.	McDaniel	4		24
hburn	Ashburn Drug Co.	Faireloth	3	30	17
pton	Brooks Drug Store	Thrasher	3		12
ultrie, Ga.	Hawkins Drug Store	Powell	3		17
uglas	Union Pharmacy	Coleman	3		12
tzgerald	Adams Candy Kitchen	Adams	3		15
illa	Ocilla Pharmacy	Smith	4		12
rdele	Steab's Drug Store	Hughes	3	20	15
in Gaines	John Brown's Place	Graham	4		30
inbridge	Mills Drug Store	Welch	3	30	20
el	Adel Drug Co.	Gunn	3		11
omasville	Ingram Drug Co.	Pate	4		24
hham	Consolidated Drug Co.	Mitchell	3	36	17
milla	Stripling's Phar.	Stirpling	3		14
itman	Horn Drug Co.	Dobbs	2	45	12
ldosta	Bergstrom & Newberg	Pope	3		18
ayeross	Cherokee Pharmacy	Sutton	3		14
illas, Texas	Southland Pharmacy	Arrant	6		
illas	St. George Drug Store	McCarty and White	4	15	
illas	Cecil V. Rogers Drug St.	Asbell	4		
ouston	Rouse Drug Co.	Clark	4		
ouston	Public Drug Co.	Dent and Englands	3	25	
ouston	Wicks & Co.	Grenillon	3	30	
ouston	Keisling Pharmacy	Johnson	3		
ouston	J. H. Wood's Drug Store	Turner	3	45	
n Antonio	Summers Drug Co. No. 1	Walker	4		3
n Antonio	Quillian Confectionery	Quillian	3		
n Antonio	Whisenant Drug Co.	Barr	3	10	
n Antonio	Wagner Drug Store	Sample	3		
n Antonio	Taliaferro Drug Store	Thurman	3		
n Antonio	Pfeiffer's Pharmacy	Brass and Pittman	3	30	3
ustin	Crescent Confectionery	George	3	20	2
aylor	Dalliet's Pharmacy	Wassinger	4		
emple	Willis & McLean	Otto	2	30	
anis	Glover & Guthrie Drug Co.	Rogers	3		1
orsicana	Owen Matthews Drug Store	Croft	2		
orsicana	Harper & Inabnit	Martin	2		1
orsicana	Harper & Inabnit	Martin	2		
orsicana	Lawson Colson's Drug Store	Griffin	2		

(Deposition of Sam Friend.)

I saw "Coca-Cola" advertisements in each town that I visited [678] in the nature of signs, billboards, glasses, napkins, trays, in street-cars, on fences, in soda-fountains, newspapers, and magazines. I saw it generally advertised in all of those ways. In none of the towns or cities that I visited did I see any advertisements of "Koke" or "Dope."

Yes, sir; I remember where I was on the 23d of last June. I accompanied John Cain, W. J. Cheevers, and B. J. Gillon to the saloon of Thomas Rausch in New Orleans, La., where the said John Cain asked Thomas Rausch did he remember of his calling on him in the interest of the Southern Koke Company; whereas the said Thomas Rausch said he did; Cain then asked him, "do you remember what arguments I advanced in trying to sell you 'Koke?' " and Rausch said "you tried to sell me 'Koke' and told me it was the same thing as 'Coca-Cola' and could be used as 'Coca-Cola' without the consumer knowing the difference." I then accompanied John Cain, W. J. Cheevers and B. J. Gillon to the saloon of Ed. Morero, where Cain asked Mr. Morero did he remember his calling on him in the interest of the Southern Koke Company; whereas Morero said that he did, and that the arguments that he had advanced were that "Koke" was the same thing as "Coca-Cola" and could be passed off to the consumer without the consumer knowing the difference.

In the course of my investigation, as previously described, I visited seventy-one towns, heard 997

(Deposition of Sam Friend.)

calls for "Coca-Cola," 987 calls for "dope," and 593 calls for "coke" by customers at the soda-fountain during the time of my observations. I did not hear any objections to their serving "Coca-Cola" as "coke" or "dope." I heard 692 people who asked for "dope" and 438 people who asked for "coke," asked what they meant thereby and the answer of each one of them was that they meant "Coca-Cola" exclusively. No, sir, not one of them answered that he meant anything else than "Coca-Cola."

Yes, sir; I have seen the two bottles which you are now exhibiting to me, being respectively Plaintiff's Exhibits #154 and #155, and being two bottles marked "Koke" on the crown. [679] I first saw them yesterday morning at 8:15 at the store of A. Conti, 2510 Elm St., Dallas, Texas, in a case of soft drink bottles. A. Conti is a dealer in soft drinks. I went in and picked up the two bottles, asked that they be sold to me, and paid for them. I have no knowledge as to where Conti procured them. The crown on the bottle has on it "Koke, trademark." It does not indicate on the crown by whom it is bottled. (Plaintiff here tendered and offered in evidence Plaintiff's Exhibits #154 and #155, as evidence on its behalf.) Exhibit #155 has a crown similar to that on Exhibit 154. I first saw the bottles marked Plaintiff's Exhibits Nos. 156, 157, 158 and 159, at Paynes' soft drink stand, corner of Elm and Walton streets, Dallas, Texas, at 8:30 A. M., August 10, 1914. I saw these bottles in the case in said store and purchased them. Each of these bottles

(Deposition of Sam Friend.)

bears a label reading as follows: “ ‘Koke’; trademark registered August 21, 1906, No. 55878, U. S. Patent office, bottled under the authority of the Koke Company of Texas, Dallas, Texas, W. McCarty Moore, President.” These labels were on the bottles when I purchased them. (Plaintiff here tendered and offered in evidence Plaintiff’s Exhibits #156 to #159, inclusive.) The crowns on Exhibits #156 and #159, inclusive, have no inscriptions of any kind or character, or any marks of identity. They are just blank, undecorated crowns. Exhibits #154 and #155 have decorated crowns but no labels on the bottles, the crowns mentioned having the word “Koke” thereon. I first saw the bottle marked Plaintiff’s Exhibit #160 on the wagon of the Crown Bottling Company of Dallas, Texas, yesterday morning at 8:35 A. M., when the wagon was standing at the corner of Elm and Walton Streets. The driver of the wagon gave that bottle to me. I asked him for it. At the time I purchased it the bottle contained a label similar to that on Exhibits #156 to #159, inclusive. There is no mark of any kind on the crown. It is just a blank undecorated crown. There are some letters blown in the bottle, but all I can make out is Crown Bottling Company, Dallas, Texas. This bottle, like the others above referred to, also contains a label that was put on by me after I purchased it as a means of identifying the bottle and as a memorandum of the circumstances surrounding the purchase. [680] (Plain-

(Deposition of Sam Friend.)

tiff here tendered and offered in evidence Plaintiff's Exhibit #160.)

Cross-examination by Mr. DART.

Yes, sir; I have been here all the time you have been taking depositions and I was here during the cross-examination of Mr. Peace. I was a detective in the Pinkerton force for three years before I joined the Coca-Cola Company, during which time I was engaged in work like that which I have here testified about, which work was done for the Coca-Cola Co. That work was carried on through the States of Virginia, West Virginia, North Carolina, South Carolina, Florida, Alabama and Mississippi. While I was with the Pinkerton force my earnings were \$80 a month, and, after serving on this class of work for three years, I joined the "Coca-Cola" force about eight months ago, at a salary of \$100 a month and all expenses. There is no limit put on me as to the amount of my expenses except a limit of honor. It depends entirely on me, myself, what I spend. I am sent out to get certain things and am not supposed to stint myself in getting the information desired—that is, I am not supposed to stint myself with money. You ask if it is part of my duty to search for bottles; my duties with the Coca-Cola Company are anything to the best interests of that company in every connection. It is true that the label on the bottle marked Plaintiff's Exhibit #160 is very much rumpled and that there is a lot of glue all around it. I refer to the printed label thereon, which has on it the trademark "Koke" and the

(Deposition of Sam Friend.)

other wording which I quoted a while ago. You ask if it was not rather a clumsy hand that put that label on; I couldn't tell who put that label on because I didn't. It looks like a botchy piece of work, though. I don't think the same applies to the label on Exhibit #158,—not as much so as the other one. You say you notice, however, that the glue is spread on the outside of the bottle and outside of the label; I don't know whether it's glue or what it is, it's smeary paste. There is some smeary paste outside of the label. I don't see very much glue on Exhibit #159. [681] “XQ. 40. I will show it to you, it's visible to my eye—right there where your finger is—don't scrape it off, I have a desire to keep it.” “A. It looks like glue, I couldn't swear it is.” You ask if the label isn't put on very clumsily; I can't say about that. The label on Exhibit #157 appears to have been put on clumsily and the glue projects on the bottle outside of the label. On Exhibit #158 a small amount of the glue is also on the outside of the label. You ask if in the course of my travels, these are the only bottles that I ran across; I never had occasion to look for them. I could have gotten a great deal more because the wagon was standing out in front loaded with them. I didn't get more because I didn't think we needed them and I couldn't carry more. You ask if I looked at them all; well, I could see from a distance. I was right at the wagon and I swear that wagon was loaded with such bottles—I don't know that they were all smeared and rumpled because I didn't examine every bottle.

(Deposition of Sam Friend.)

Dallas is the only town where I found those things and is the only one where I had any occasion to look for them. When I got them I turned them over to Mr. Pearce. "XQ. 54. Mr. Pearce, who is acting as counsel for the "Coca-Cola" Company—he is, isn't he?" "A. I suppose he is." You say you notice that the newspaper in which these bottles are wrapped bears date May 10, 1914, and you ask how I suppose that those bottles which I bought yesterday got wrapped in a paper bearing date May 10th. There was some old papers in the hotel room that they were wrapped up in—no particular notice of the date of any paper was taken when it was wrapped up. I am stopping at the Adolphus Hotel. You ask if they have got old papers hanging around there; if you so desire, they are kept in the linen room, and if you want them you can get them. No, I did not send for them. If that paper was in the Adolphus Hotel it was not in my room. Yes, sir; I wrapped up those bottles. I did not get that paper in my room, but I got it in Mr. Pearce's room. He furnished the paper and that's the paper, so far as I know, they were wrapped up in. Yes, sir; Mr. Pearce is also traveling around the country on this same kind of work. Yes, sir; I knew him before I met him as counsel for the Coca-Cola Co. I knew him when he was superintendent of the Pinkerton National Detective [682] Agency, Atlanta, Ga. I have known him for three years,—that is, for the three years I was working for him. No, he did not become lawyer for the company about the same time

(Deposition of Sam Friend.)

I began working for the company, it was a great deal later, I think it was six or eight months later. No, I have not been with Mr. Pearce in my operations and I have not seen him operate. The labels on Exhibits #154 to #160 inclusive, which I said I put on there are in my handwriting. I wrote those labels yesterday morning, as soon as I could get to a place to write them. I wrote them in the Adolphus Hotel and the bottles had never left my possession until the labels were written.

In this New Orleans adventure with Rausch and Marero, I said that Cain did the talking,—that is, he asked the questions and the owner of the saloon replied. I don't know Mr. Morero personally, nor do I know Mr. Rausch personally. Yes, sir; Cheevers was of that party, but he did not do any talking nor did anybody else do any talking. In each instance there was a question and a reply and a question and a reply and we went away. No, sir; I do not know whether or not any stuff had been sold at either of those places. I don't know whether or not it was said that none had been sold. I don't know as a matter of fact whether any had been sold or not.

Deposition of T. C. Lupton, for Plaintiff (Recalled).

T. C. LUPTON (Recalled).

Direct Examination by General CRANE.

The paper filed as Plaintiff's Exhibit #161 purports to be a list of all the sales of bottled "Coca-Cola" which we sold on the dates therein specified. It begins March 4, 1912, and ends December 31, of

(Deposition of T. C. Lupton.)

the same year. The other two installments of the same exhibit purport to be sales from January 1st to December 31, 1913, and from January 1st to August 10, 1914. These are the exhibits which these gentlemen called for. I know that exhibit is a correct statement. Plaintiff's Exhibit #162 contains a complete list of all the orders that I received for "coke" for the year 1912. There is a total of 646 cases of "Coca-Cola" ordered as "coke" on this list. Plaintiff's Exhibit #163 consists of orders sent to the Coca-Cola Bottling Works by the parties whose names the orders bear and at the dates they bear. [683] Each of these orders calls for "coke" and each was filled with "Coca-Cola." We shipped "Coca-Cola" wherever "coke" was called for and there was no objection made on the receipt of the "Coca-Cola" as not being the article ordered. Plaintiff's Exhibit #164 shows the sales of cases of "coke" that should be "Coca-Cola" for the year 1913. Plaintiff's Exhibit #164 is a statement of the "Coca-Cola" that we shipped on orders for "coke" for the year 1913, and amounts to 120 cases. There was no complaint made that we hadn't shipped the article which they ordered. Those shipments were made upon orders directed by the people who made the orders to the Coca-Cola Bottling Works, which concern shipped "Coca-Cola" on those orders for "coke." Plaintiff's Exhibit #165 purports to be a list of the people ordering "Coca-Cola" under the name of "coke" and the amounts of their respective orders during the year 1914. These were embraced

(Deposition of T. C. Lupton.)

in the orders filed yesterday as Plaintiff's Exhibit #152. During the year 1914, there were 215 cases of "Coca-Cola" shipped in response to orders for "coke." Yes, sir; I have examined the orders in the Exhibit #152 that were undated and I think Plaintiff's Exhibit #166 is a correct list of them, both as to the names of the people making those undated orders and the amounts of "Coca-Cola" shipped thereon in response to such orders. (Plaintiff here tendered and offered in evidence Plaintiff's Exhibits #161 to #166, inclusive.)

Cross-examination by Mr. DART.

Yes, sir; I have made another investigation to find orders in the name of "coke" instead of "Coca-Cola." You ask if I have found them all now; well, Judge, no, sir, I don't believe we found them all. I have been working ever since I saw you, with the exception of a little spare moment I had this morning. Yes, sir; I have raked my files over and if there are any more orders for "coke" in there they have escaped my attention. I think I have got all of them now.

STIPULATION.

It is stipulated by and between the parties hereto, by their respective counsel, that Edward T. Longstreth and C. Stanley [684] French, if called as witnesses in these cases, would testify:

C. Stanley French. Over 21 years of age. Lives in Philadelphia, Pennsylvania, being a paint manufacturer, having been so engaged for the past twenty years. He is General Manager of the firm of Samuel

H. French & Co., of Philadelphia, manufacturers of paint. The firm has had dealings with the Coca-Cola Co., of Atlanta, Georgia, having furnished them paint for the last 12 years. The color of paint sold by my firm to the Coca-Cola Company is red. The Coca-Cola Company has never varied from the color of paint ordered from us, and we have never furnished them barrel paint in any other color. We furnish the paint in half barrels and barrels. The market price of this red barrel paint furnished the Coca-Cola Company is three cents per pound a barrel. There are other barrel paints of other colors than red which are just as cheap as red barrel paint sold by us to the Coca-Cola Company—for example, browns, and yellows,—the general market price of which is the same as the red. The Coca-Cola Company has always been very particular in having a specific shade of red and require that that particular shade be furnished every time. We recognize in our factory that it is necessary always to make their standard shade. The Coca-Cola Company has within the past three years practically consumed our entire output. This particular red is made for painting barrels and kegs. This paint is prepared specially under our own formula, with care. Other manufacturers make red barrel paint. The class of paint manufactured by us for the Coca-Cola Company is of superior quality, due to the process of manufacture and the shade of color manufactured has been practically adhered to by us. The shade that we have been furnishing the Coca-Cola Company is not generally used for painting barrels or kegs.

Edward T. Longstreth, 38 years old. Is with the firm of Samuel H. French & Company, of Philadelphia, being factory manager of said firm, and originally produced the paint furnished the Coca-Cola Company, and is familiar with the composition of paint manufactured by this firm. [685] His firm has had dealings with the Coca-Cola Company and has furnished them paint for the past 10 or 12 years. The paint manufactured and sold to the Coca-Cola Company is red. They have never purchased from us any other shade than red, or any other color of barrel paint than red. There is just one fixed shade of red that they have purchased. I am familiar with the process and colors of barrel paint to a general extent. The regular market price of red barrel paint furnished by use to the Coca-Cola Company is three cents per pound. There are barrel shades of other colors that are just as cheap as red, in fact, cheaper than the red supplied by use to the Coca-Cola Company, as, for example, browns and yellows. When the Coca-Cola Company started to do business with us they adopted a certain shade of red that we made, as their standard, which they have adhered to in all purchases of paint from us. They have always been particular that no variation from this shade or quality of paint should be made, and with that fact in view, they have always been willing to pay us a higher price to maintain this standard. We, on our part, have always maintained the high quality and shade of paint which was adopted by them as their standard when they originally started business with us.

It is agreed that the above and foregoing testimony may be used as evidence by the Coca-Cola Company as if the witnesses themselves were present for the purpose of examination and so testified.

(The depositions of the following witnesses were taken at Chicago, Illinois, August 17, 1914:)

Deposition of William G. Mansfield, for Plaintiff.

WILLIAM G. MANSFIELD.

Direct Examination by Mr. ROGERS.

I am 22 years of age, live in Chicago and am employed by the Quaker Oats Co. Yes, sir; I recollect answering an advertisement in the "Chicago Tribune" about the middle of April a year ago. The slip which you show me, being Plaintiff's Exhibit #165, I can identify absolutely; it is the advertisement to which I refer in the "Chicago Tribune." I answered it and received an answer from Mr. E. M. Boyd. [686] On Monday morning I called on him at the Palmer House at Chicago. I met him and he shook hands with me and told me he had a good proposition for investment and told me to call around 12 o'clock and we would have dinner and he would then explain the whole proposition. I called at the appointed hour and Mr. Lon Ware joined us and the three of us had dinner at the States Restaurant. By the three of us I mean Mr. Boyd, Mr. Ware and myself. Mr. Boyd told me that he had a formula exactly the same as that of "Coca-Cola." He told me he was selling eight per cent cumulative preferred stock at par and was giving a bonus of common stock

(Deposition of William G. Mansfield.)

to the druggists who dealt in his "Koke," which was a product manufactured by the Western Koke Company, which concern Mr. Boyd was representing. I then told him I thought there would be quite a good deal of competition on account of his formula being the same as "Coca-Cola"; but he argued that there would not, as he would not have to do any advertising and when a person comes into the drug-store and asks for "Coca-Cola" the druggist will give him "Koke," the customer not knowing the difference. I told him that I knew the Coca-Cola Company did a great deal of advertising and spent a great deal of money. He told me that the Western Koke Company would not have to advertise, because the formula was just the same as "Coca-Cola" and when a customer comes into the drug-store he would not know the difference. You ask if anything was said about the sale of his, Boyd's, product, in response to requests for "Coca-Cola"; yes, sir, I gave that. A customer wouldn't know the difference. The only other conversation I had with him was about the stock; I talked to him about the stock. No, sir; I did not make any investment. (Plaintiff here tendered and offered in evidence Plaintiff's Exhibit #167, being the advertisement from the "Chicago Tribune" April 18, 1913.)

Cross-examination by Mr. LITTLETON.

I am at present a clerk of the Quaker Oats Company and have been with that company since November 1, 1913. [687] In October, 1913, I was with the Middle West Utilities Company, occupying the posi-

(Deposition of William G. Mansfield.)

tion of clerk. I am 22 years old. The position I was seeking with Mr. Boyd was that of an officer of the company, something similar to that. You ask if, when Mr. Boyd came here to Chicago looking for a business manager, he came to a young man 20 years old to make him general manager of this western territory; no, he was not going to make me that. He represented to me that he was going to make this Mr. Lon Ware manager, and I was to assist him, according to what he said. No, sir; he did not say anything to me about the pay I was going to get. We finally did not get together and did not make any arrangements. Yes, sir; it surely is a fact that Mr. Boyd told me that druggists and dealers could sell this when people asked for "Koke," that the name of this product was "Koke" and that when people asked for "Koke" they could sell it as such. He told me that when a person came in and asked for "Koke" after they got used to the name, of course, they would use it and sell it as such, and, also, "Coca-Cola" when a customer came in. Yes, sir; I am certain he said that they could sell it when people asked for "Coca-Cola." I don't know where Mr. Ware lives. I only met him then. I don't know whether he is a native of Chicago or not. That was the only time I saw him in company with Mr. Boyd. He was present and heard all that I heard, and if Mr. Boyd had made any statements to me that this product "Koke" could be substituted and a fraud practiced upon the public by selling it when people asked for "Coca-Cola," Mr. Ware was there and heard it, too. You

(Deposition of William G. Mansfield.)

ask how it happened that Mr. Boyd unfolded to me this fraudulent scheme—me, an utter stranger; he was almost sure I would invest money in it. You ask if he thought I, a young man twenty years old, was a capitalist; he thought I had some money, sure. Yes, sir; I was a stranger to him before that. I just came in answer to this advertisement and he then unfolded a fraudulent scheme to a total stranger. You ask if he did that with the idea that a young man twenty years old would be able to finance this thing; he did not think I would finance it; he thought I would put in one or two thousand dollars. [688] He wanted to sell stock to various people. Yes, sir, he deliberately came up here and unfolded to me, an utter stranger, a fraudulent scheme and did all this in the presence of a third party.

Redirect Examination by Mr. ROGERS.

Yes, sir; I answered this advertisement in the "Tribune." Boyd did not look me up, or anything of that kind, so far as I know. I did not give him any references or anything. Then he wrote me a letter and then we had a meeting.

Recross-examination by Mr. LITTLETON.

I do not know who Mr. Boyd was and do not know of my own knowledge that he had any connection with the Koke Company, excepting what he told me. No, I don't know whether he is the same E. M. Boyd who is now connected with those companies or not, unless I see him, I could tell then. I have not seen him for over a year. For all I know, except for his statement, he may have been a Pinkerton Detective.

(Deposition of William G. Mansfield.)

Redirect Examination by Mr. ROGERS.

No, sir; I have no interest in this controversy.

Recross-examination by Mr. LITTLETON.

The information which I possess got into the possession of Mr. Rogers through Mr. Wilkins, who wrote me a letter. Mr. Rogers told me that he got my name from some detective agency. I then gave this information to Mr. Wilkins, the gentleman sitting here, who is an investigator for the Coca-Cola Co. I told him about it because he asked me for the information. I presume he knew that I had this information through the detective agency. I don't know how the detective agency found out about it; I would like to know myself. I do not see how they got my name. Mr. Wilkins asked me about this about three or four weeks ago. I volunteered the information and have come here voluntarily and not by summons. Mr. Rogers just told me to come up. Yes, sir; I am just here upon the request of the attorneys of the Coca-Cola Company,—that is Mr. Rogers. I want to help them in any way I can.

Deposition of George H. Wilkins, for Plaintiff.

GEORGE H. WILKINS. [689]

Direct Examination by Mr. ROGERS.

I am 38 years of age, reside at 3220 Warren Ave., Chicago, Ill. I am an investigator employed by Reed & Rogers, by whom I have been employed intermittently for about six or seven years. I made an investigation in August, 1913, for the Coca-Cola Company, under the instructions of Messrs. Reed & Rogers. I

(Deposition of George H. Wilkins.)

went to New Orleans first. The first party I saw was Mr. Cheevers on St. Charles Ave., New Orleans, ex-saleman for the Koke Company of New Orleans, the exact name of which is the Southern Koke Company, and it is located on Highland Avenue, I forget what number in New Orleans. I met a man named J. C. Mayfield at New Orleans in connection with this investigation. It was introduced to him by Mr. Cheevers in his office on Highland St. Plaintiff's exhibit #168 is a photograph which I took after conversation with Mr. Mayfield and Mrs. Mayfield, with Mr. Cheevers present. I asked them to step out of the doorway and I photographed the place. Mr. Mayfield is in that picture dressed in the light suit, white I guess. I saw Mr. Mayfield for the first time on August 27, 1913. After being introduced by Mr. Cheevers, I told Mr. Mayfield I would like to get some of the literature of the Southern Koke Company, some of the printed matter. He said "we have very little but here is a perspective," and gave me one, which is filed as Plaintiff's Exhibit #169. No, I did not identify it in any way when he handed it to me. Shortly after that I wrote my name and the date across the face. My name appears on Exhibit #169 and I identify that as the perspective Mr. Mayfield gave me. Mr. Mayfield wanted to know what I wanted the stuff for. I told him I thought of investing some money in a soft drink enterprise such as he had. He said "well, I own three-fourth's interest in the 'Coca-Cola' formula." I said "well, you must be a very rich man then."

(Deposition of George H. Wilkins.)

He said "well, I have never made any money out of it, but here is what I will give you." He handed me a slip, which is known as the Pemberton slip, and is filed as Plaintiff's Exhibit #170. I wrote my name and address on the face of that Exhibit as soon as I left the place and by that means identify Exhibit #170 as the one which Mr. Mayfield gave me. Mr. Mayfield gave me a tag and an envelope and a subscription blank and a stock certificate at that time and a post card. [690] Plaintiff's Exhibit #171 being a postal card addressed to the Southern Koke Company, Ltd., is the post-card Mr. Mayfield handed me. I wrote my name and the date across the back of the card as soon as I left the place. Plaintiff's Exhibit #172 is a stock subscription blank which I identify in the same manner. As soon as I left the place I wrote my name and the date across the face of it. That is the stock subscription blank to which I refer. Plaintiff's Exhibit #173 is a slip Mr. Mayfield handed me showing what business they did in Texas. It is called the drug-store slip. I wrote my name and the date across the face of that. Plaintiff's Exhibit #174 is a contract between the Koke Company of America and the Southern Koke Company, Ltd., which Mr. Mayfield handed me. He told me that was a contract which he gave out for people to use his product, the syrup. I wrote my name across the face of it. Plaintiff's Exhibit #175 is a shipping tag, which Mr. Mayfield handed me. I put it in my pocket and wrote my name across the face of it. The envelope marked Plaintiff's Exhibit

(Deposition of George H. Wilkins.)

#176 I identify in the same manner. I got that from Mr. Mayfield also. The card filed as Plaintiff's Exhibit #177 I got from Mr. Cheevers and wrote my name across the face of it. I received the contract, printed form, having across the top, "Southern Koke Company, Ltd.," which is filed as Plaintiff's Exhibit #178, from Mr. Cheevers and marked my name and the date across the face of it. The stock certificate marked Plaintiff's Exhibit #179 I also received from Mr. Cheevers and marked my name and the date across the face of it. I had a conversation with Mr. Mayfield with respect to the contract of the Southern Koke Company, Ltd. I asked Mr. Mayfield if they were doing any advertising, and he said, "No, I have spent several fortunes in advertising and now I am going to retrench. I am not going to do any advertising for 'Koke.' 'Coca-Cola' has spent millions in advertising and every dollar they spend helps 'Koke.' " I asked him how that was, and he said that lots of people asked for "coke" when they meant "Coca-Cola" but they could not help that; that the "Coca-Cola" also sold their product as "Koke" but that he would stop that later and that his bottle and label was the same as "Cola-Cola" and lots of people thought it was "Coca-Cola." [691] When I was in this building of the Southern Koke Company, Ltd., I observed in the rear part of the building,—it's on the main floor away from the office,—there were ten barrels all painted red and on the top of one was a "Coca-Cola" label. There were several barrels

(Deposition of George H. Wilkins.)

standing outside and the rest of them were inside. All of these barrels were dark red, a sort of brownish red. In company with Mr. Cheevers, I went to the store called Clark's Grocery Store and asked for a bottle of "Coca-Cola" to take out. The woman waited on me and gave me the bottle filed as Plaintiff's Exhibit #180, which I put in my pocket. As soon as I got out I put a tag on it and marked it for identification. It is a "Koke" bottle labeled "Koke" and on the cap of the bottle is the word "K-O-K-E." I marked on the face of the bottle first until I got to the street-car, and then put the tag on it. This writing on the label, and the tag, is mine. Accompanied by Mr. J. C. O'Neil, I went into the Comus and asked for a drink of "Coca-Cola." The bartender served me with a drink. I could not determine what it was he served me with. It didn't taste exactly right, it was a little bit warm. I asked him if it was "Coca-Cola." He said, "yes," and reached down under the counter and pulled up a bottle of "Coca-Cola." It was alright. I returned to the Comus about noon-time and the same bartender was there, but there was another one down a little further. I went to the other one and he did the same thing. I could not see the label because he covered it with his hand. He poured out the drink, but the bottle looked like an Appollinaris bottle. I went in later with Mr. O'Neil and bought a drink also for him. I asked for two bottles of "Coca-Cola" to take out. He wrapped two bottles in a newspaper and I did not open them until I got

(Deposition of George H. Wilkins.)

outside. I opened them in the presence of Mr. O'Neil and took them across to the Gruenwald and labeled them there. The bottles filed as Plaintiff's Exhibits #181 and #182, are the ones to which I refer. I was instructed, in making this investigation, to look out for any advertising of any product under the name of "Koke," and in a very few cases I did observe such advertising. The first place I saw it was back in the wine-room of a saloon. I saw two oblong cards, a yellow and a white one. [692] The saloon was the Bandera, right across the street from the Koke Bottling Works. We went to the back room and asked for a drink of "Coca-Cola." He informed us that he had none and had not had any for a year. I asked him what the signs were doing there. He said, "Well, they are no good." I took them from the wall and identified them by writing on them. Plaintiff's Exhibit #183 are the signs to which I have reference. Plaintiff's Exhibit #184 is a lozenge-shaped sign bearing on both sides the word "Koke." This is the sign which I saw but twice. I do not remember exactly where I got it, but it was in one of the places where they had some "Koke" but did not sell it any longer. I wrote my name and date on one side of the sign. I got this sign in New Orleans. I also saw a similar sign hanging in the window of the Southern Koke Co. On Mr. Mayfield's desk was an oval tin sign with a celluloid face with the word "Koke" on it and some other words around it. I did not see any signs bearing the word "Koke"

(Deposition of George H. Wilkins.)

in any other, place except the two oblong signs Exhibit #183, the diamond-shaped sign marked Exhibit #184, and the oval metal sign on Mr. Mayfield's desk. I looked particularly every place I went for "Koke" advertisements and, with the exception above stated, I saw none.

From New Orleans I went to Dallas, Texas. Plaintiff's Exhibit #185 is a letter signed by J. C. Mayfield, which he gave me at his own suggestion. It is addressed to J. G. Van Winkle, Secretary, Texas Koke Company, 1624 Bryan St., Dallas, Texas, and is dated August 29, 1913. I presented that letter to Mr. Van Winkle the day after it was dated. I went directly to the office of the Texas Koke Company within half an hour after arriving in Dallas. In the building there was a six hundred gallon mixing tank with a motor. I think it was belt driven, but a motor drove the line shaft. There were, as near as I could judge, about one hundred barrels altogether in the building. Most of them were red. There were a few that were not red, which were in the process of being painted a dark red by one of the six negroes employed there. When I was standing in the office probably eight or ten feet from the partition, which was half wood and half glass, I saw barrels piled up to the ceiling of the office and facing [693] anyone who would look that way was a barrel with a label on the head, "Coca-Cola." It was a "Coca-Cola" barrel label with a couple of marks through it. Looked as though a scratcher was run across the face of it. I

(Deposition of George H. Wilkins.)

told Mr. Van Winkle I thought of investing some money in the New Orleans proposition, and that I came over with this letter from Mr. Mayfield with the intention of finding out why they were successful and how they did business. Mr. Van Winkle told me that it was a good proposition and that the Texas Koke Company were making money and had paid one eight per cent dividend and were doing quite a lot of business and practically shipped all they could make and handle; and, of course, being in the busy season, or the best season for soft drinks, they were busier than any other time; that they were selling their entire product and had sold—I asked just how many gallons he sold, but it was not far from the neighborhood of 100,000 gallons of syrup. I asked him how he made his syrup and he took me back and showed me the tank the second time. The first time Mr. Nason showed it to me. I met Mr. Nason in the office, being introduced to him by Mr. Van Winkle, who said “Mr. Nason, explain to him about the way we sell the stuff.” Mr. Nason showed me a map back of the store with a number of flat headed tacks stuck under there. He said, “every one of those towns represent an agency.” It was a small drawer map of Texas with practically the Northeastern part full of pins, a pin in almost every town. I left the office with Mr. Nason and went down to the bank. He said he was going to the bank and I told him I wanted to go to the hotel and clean up. I made an engagement with Mr. Van Winkle for 2:30 in the afternoon and I went down with Mr.

(Deposition of George H. Wilkins.)

Nason at eleven o'clock or shortly after that. I got into conversation with Mr. Nason, and, among other things, asked him how he was selling "Koke." He said, "Well, lots of people ask for 'coke' when they mean 'Coca-Cola' and they do not know there is any such drink as 'K-O-K-E.' Of course, we can't stop that; if they want to do that we can't help it. We sell this product as 'Koke,' and, if they want to substitute it, that is their business." [694] I then asked him why there was such a demand for "Koke." He said, "well, lots of people ask for 'Coca-Cola' as 'coke' and 'dope' and other names." He said some other names, but I did not pay much attention. He left me and walked into the bank and I told him I would see him later, and went back to the hotel and had luncheon. At about 2:30 I went back to the office of the Texas Koke Company on Bryan Street. Mr. Van Winkle was there and I told him I wanted to find out how much business they did. He asked me if I knew anything about accounting, and, when I told him I did, he opened his ledger and put it in front of me. I went over his ledger and determined from his merchandise and sales account that he did during the twelve months term prior to that about \$34,000 worth of business. I went over it very carefully and took my time. The only thing I was after was the total amount, so I did not make any memorandum, excepting the \$34,000. I then asked him where his customers were. He said his contract called for the State of Texas and that all his customers were in that State. I asked

(Deposition of George H. Wilkins.)

him Mr. Nason's position and he said "he is a salesman and a good one. He has the Northeastern section of Texas for his territory." I asked him to show me a list of his customers. He pointed to a set of card-index drawers to my left, as I was sitting at the desk in front. I asked permission to inspect the drawers and he said, "help yourself." I opened the drawers and glanced through, and almost every county in Eastern Texas there was a name and on some cards there was a number. I asked him what that number meant and he said, "that is the number of gallons this man got last month." I asked Mr. Van Winkle why he shipped the stuff in those barrels. He laughed and said, "Well, I would rather have 'Coca-Cola' barrels than anything else, to ship this product in. I pay a dollar apiece for the 'Coca-Cola' barrels." I told him I had positive knowledge that they were for sale at sixty-five cents apiece in New Orleans. He said, "you can make more money by shipping me barrels than any other way I know. You go to New Orleans and ship me 'Coca-Cola' barrels as good as new, or the best you can get, and I will pay you a dollar apiece for them." [695] After examining these drawers of cards containing customers' names, I asked Mr. Van Winkle for advertising matter. There was quite a little on the desk and he told me to help myself. I took one of each kind of advertising matter before me. Those that I did not see readily he helped me to. For instance, the bill of lading. He tore a triplicate sheet out of his bill of lading book, saying that he had had

(Deposition of George H. Wilkins.)

those printed for his own special benefit. Plaintiff's Exhibit #186 is a bundle of slips, envelopes and sheets of paper. It is the advertising matter which I obtained from Mr. Van Winkle at the time of my visit on August 30, 1913, and is the advertising about which I have been testifying, as given me by Mr. Van Winkle. There are fifteen sheets and I identify them because I think in every instance my name and the date is on the face or the back of each sheet. There was no other advertising matter, unless you would term a bottle advertising. I saw a bottle standing on Mr. Van Winkle's desk, which was an ordinary type of dispensing bottle commonly used at soda-fountains. That is the bottle I refer to. I asked Mr. Van Winkle if they put out any of those, pointing to the bottle. He said, "yes, we have ordered several thousand of these and as yet we haven't any—we have a few." I asked him where he got them, but I don't remember where he said he got them from. On the face of the bottle blown in on the label was the word "Koke"—"K-O-K-E." He gave me a bottle, which I wrapped up, and told me they cost 22¢ apiece. I offered him a quarter, but he refused it. I kept the bottle, tagged it, brought it back to Chicago and had it photographed. The photograph which is attached to the bill of complaint in these cases is the photograph of that dispensing bottle. It is on the same sheet with the photograph of the "Coca-Cola" dispensing bottle. I thoroughly covered Dallas to see if I could see any advertisement of any product under the name of

(Deposition of George H. Wilkins.)

“Koke” but I found nothing of that kind. I left Dallas on September first on the trolley and went over to Ft. Worth. I first called on Mr. Lupton, the local bottler of “Coca-Cola,” who said he had quite a little trouble in selling some people and that his drivers had reported that some people were substituters. I got a list from him, but it was a very old one. [696] He had an idea that the matter was entirely settled and disposed of. I went over the list, which consisted of some eighty or ninety saloons, soft-drink stands, confectioners and druggists, with the following result:

I called on the Sanitary Company, Weatherford and Throckmorton Sts., Ft. Worth, Texas, on September 1st, at suggestion of Mr. Lupton, and asked for a bottle of “Coca-Cola” to take out. The clerk handed me a bottle which I wrapped up in a newspaper, which was lying on the counter, and put it in my pocket and went out. As soon as I got out I showed Mr. Lupton the bottle and immediately put a tag on it and labeled it as per of the label attached to the bottle, filed as Plaintiff’s Exhibit #187, which is the bottle I purchased at the Sanitary Company, as above stated, in response to a request for “Coca-Cola.” No explanation was made, and nothing was said by the person who waited on me, to indicate that what was being given me was not “Coca-Cola.” I have related everything that occurred as near as I can tell. Mr. Lupton informed me that the public park had a concession which operated daily. I got on the street-car and went to this park, which was

(Deposition of George H. Wilkins.)

called Trinity Park. It was on the edge of town and was quite a large one. In the center was a soft-drink stand or concession, as it was called, run by Mr. Frank Ford. I went to the clerk and asked for a bottle of "Coca-Cola." I forgot to tell him that I wanted to take it with me and so he opened the bottle. I paid for the drink and drank it and then told him I would like to take a bottle along, whereupon he handed me the bottle. I asked him if it was "Coca-Cola" and he said, yes. I put the bottle in my pocket, paid for it and went to a bench in the park and wrote out the tag and attached it. The bottle with the tag attached, filed as Plaintiff's Exhibit #188, is the bottle which I purchased on this occasion. Nothing was said to me to indicate that what I was getting was not "Coca-Cola." Leaving Ft. Worth, I stopped at what was known as Lake Erie, which was a sort of public amusement park on the trolley road from Galveston to Ft. Worth. This station was named Handley, Texas. I arrived there in a sort of stockade, where the passengers all had to pass through a concession which was run by a man named Tom Bunch. [697] I stopped at a counter and asked for a glass of "Coca-Cola." A young man in charge said "we haven't any." I said, "All right," and started to walk away. Another young man, who was behind the candy counter a little further back, said "Wait a minute; what do you want?" I said, "I want 'Coca-Cola' and the young man said they hadn't any." He said "We have lots of it." He called the young man, who told me that they had

(Deposition of George H. Wilkins.)

none, back of the counter, picked up a bottle from underneath the counter and showed it to him and said something to him which I could not catch and the young fellow brought the bottle up, pulled off the top and served me with a drink. I drank it, paid him, and asked if I could have a couple of bottles to take with me. He handed me two bottles unwrapped. I went over to a table and sat down to wait for a train, and while there a young lady asked for a glass of "Coca-Cola." The young man, who waited on me, pulled off the top of the bottle and it fell off the counter and rolled around. I put my foot on it, picked it up, looked at it, took out my fountain pen and marked on the inside "G. W." and put it in my pocket. The cap filed as Plaintiff's Exhibit #190 is the one to which I refer. I then went inside the grounds and sought the other soft-drink concession which was also run by Tom Bunch. I walked up to the stand and asked for a glass of "Coca-Cola." The young man picked up a bottle, yanked off the top and poured out, holding his hand over the bottle so that I could not see what it was. I drank it and asked for two bottles to take with me. He got two bottles and wrapped them up in a newspaper. I put them in my pocket and left. I put on the tags and marked them prior to putting the bottles in my grip. The bottle filed as Plaintiff's Exhibit #191 is one of the bottles to which I refer. The other bottle broke in my grip. It had a cap on it just exactly the same as Exhibit #191, with the word "Koke" on it. Nothing was said to me by the

(Deposition of George H. Wilkins.)

dispenser on any of the occasions I have testified to with respect to my purchases of bottles numbers 189 and 191, that what I was getting was not "Coca-Cola." I distinctly asked for "Coca-Cola" in each instance. [698] I saw no advertising in these parks, or at Lake Erie, of soft drinks of any kind, and I saw no advertisement of any drink under the name "Koke." Yes, sir; I saw a drink advertised under the name "Coca-Cola" in New Orleans, Dallas and Ft. Worth and in almost every place. These various documents, bottles, and the like, all have dates on them and those dates were put on at the date that I got the stuff in every instance and actually represent the dates on which I got the stuff. After leaving Dallas and Ft. Worth I stopped at Little Rock for about five hours between trains and then went to St. Louis. I saw "Coca-Cola" advertised in Little Rock but did not see advertising there of any product under the name of "Koke." I went especially to look, because I had heard they were operating in Arkansas. I saw no advertising under the name "koke" or "dope," but I saw "Coca-Cola" advertised in almost every place. The conspicuous feature of such "Coca-Cola" advertising as I saw was the words "Coca-Cola" in red and in a peculiar script. At St. Louis I called on Mr. Van Deusen. The card filed as Plaintiff's Exhibit #192 is one which Mr. Van Deusen gave me himself in his house. His house and laboratory are located at 4178 Cleveland Avenue. I told Mr. Van Deusen that I was interested in the soft-drink proposition and thought

(Deposition of George H. Wilkins.)

of putting some money into the enterprise in New Orleans and that Mr. Mayfield had given me a letter to Mr. Van Winkle, which I presented to him. He read the letter, returned it to me and said, "Yes, that is Mr. Mayfield's handwriting; what can I do for you?" I told him I was interested in "Koke" and would like to find out something about it and asked him if they made the syrup there. He said "no, we make the extract here. The syrup is made by the local company. We ship them the extract in barrel lots as they order it and they make syrup out of it by adding water, sugar and glycerine. He told me the amount added and I wrote it and copied it in the report which I afterwards dictated. I asked him if he sold much of it and he said, yes. I asked him how much he sold in New Orleans and he showed me his duplicate invoice book, showing his New Orleans shipments. I copied the amounts starting with February, 1913, and up to September 3d, or 4th, 1913, and he had shipped them on an average of $2\frac{1}{4}$ barrels per month. I asked Mr. Van Deusen if he had a contract for making "Koke" extract. He said "no, I haven't any contract, but I make it anyway. [699] I don't need a contract." I asked him how he came to make it. He said, "about six years ago, Mr. J. C. Mayfield came to me and gave me a formula and said he had had more or less trouble with it and asked what I could do with it. I looked it over carefully and told him I thought I could make a good extract out of it. Mr. Mayfield said "All right, go ahead. I have had so much trouble with it, I want

(Deposition of George H. Wilkins.)

to get somebody to put a lot of care and attention to it." Mr. Van Deusen then told me he did not see Mr. Mayfield for about a year. He said he had manufactured small quantities of it with a pretty good degree of success, they never had had any complaint about it, and that once in a while Mr. Mayfield would send him in a check, which just about took care of the account and then he would not hear any more of him until he owed him some more money and then he would go after him again; that Mr. Mayfield had started the two companies, the Southern Koke Company at New Orleans, and the Koke Company of Texas, at Dallas, and from his orders he did not think the New Orleans Company was getting along very successfully,—also, from other things; that while Mr. Scott was alive the company seemed prosperous, and, after Mr. Scott died, a man named Wm. Dalton took Mr. Scott's place and that he went after the company for payment of his bill, which was quite a large amount, and Mr. Dalton wrote him a letter and said unless they had some time he might as well known the truth, that the company was in no shape to go ahead unless they got more finances and more time from Mr. Van Deusen to pay the bill. I did not see that letter. Mr. Van Deusen told me about it. I commented on the fact that Dallas was doing a good business from Mr. Mayfield's talk. He said, "Yes, they have paid an eight per cent dividend." He also told me about the formula. Mr. Mayfield had the formula, and he had a copy, and a copy was also put in escrow with some Trust Com-

(Deposition of George H. Wilkins.)

pany in St. Louis, Mo., available to both Mr. Mayfield and Mr. Van Deusen. I asked Mr. Van Deusen if that was the only place this was sold. He said "No, I sell some to the Brewing Company in Danville and Richmond. There it is called 'Celery-Cola' and it is practically the same formula, except there is a little more celery added to it." I just recollect the name of that Brewing Company,—Portner Bros. Brewing Co. [700] I asked Mr. Van Deusen if it was not a fact that people asked for "coke" when they wanted and meant "Coca-Cola." He said, yes, but then you couldn't help taking advantage of people when they didn't know any more than that. I looked around St. Louis to see if there were any advertisements displayed of any product under the name "Koke," but I did not find any. I saw "Coca-Cola" advertising there, however, in many places. The distinct and characteristic feature of it was the script name "Coca-Cola" in red. Mr. Van Deusen said "Koke" was sold at a less price than "Coca-Cola" and that helped sell it. I believe I suggested that would help sell it, and he said, yes. I have never seen any advertising around Chicago of the word "Koke," or of any product under the name "koke," except what I brought in myself. I have seen "Coca-Cola" advertising in many places around Chicago. It is of the same general character as that which I saw in other places.

Cross-examination by Mr. LITTLETON.

I have been in the employ of Reed and Rogers as a detective from five to six years, intermittently. I

(Deposition of George H. Wilkins.)

say intermittently because I used to maintain my own office and did detective work like this for patent attorneys and trademark and copyright attorneys. Yes, I have studied law after a fashion, but have never been admitted to the Bar. Before I was connected with Messrs. Reed and Rogers I never did but one thing in this line of work and that was for the American Sugar Refining Company and that was in the line of accounting. I have done quite a lot of accounting. There is probably not more than a half dozen law firms in this city that I ever did any work for. They represent the majority of the national and international advertisers, outside of the patent attorneys, and only one set of patent attorneys. I have my own personal record, the ledger here, probably some 250 or 300 firms I have worked for. I am now a detective and have been since I have been in the employ of Reed and Rogers. I was sent out by them with specific instructions to get specific information for use in this case, and I focused my mind on getting evidence to help the company. Of course, I did all in my power while out on this trip, and raked the country over to gather all the evidence I could to assist the Coca-Cola Company, in the places where they told me to go. [701] I was on this during I think, a little over two weeks. The Coca-Cola Company paid the expenses of the trip indirectly, but I got it from Reed and Rogers. I get a per diem on the job. You ask if it is not to my interest to get the kind of information I go out for because it assists my reputation as a competent

(Deposition of George H. Wilkins.)

detective. No, I get whatever exists. Of course, it is to my interest to get the sort of information I want, if I can get it. Now if I went out repeatedly and did not deliver the goods I would soon lose my job. If information existed, I got it, but if it did not, I did not manufacture it, that is what I want to convey. Yes, sir; I said I went to New Orleans first. No, I did not misrepresent my name. I did not say that my name was G. Walton. I didn't tell him anything. I was introduced by Mr. Cheevers to Mr. Mayfield as Mr. Walton. No, I did not get Cheevers to do the deception, I did not ask him to do that. I asked him afterwards why he did it and he said he thought it best. I always travel under my own name. No, Cheevers was not in the employ of the company. I heard he was a disgruntled employe who had been pretty close to Mr. Scott and was no longer connected with them, and that is how I happened to get hold of him. I explained to Cheevers who I was and what I wanted and that I was there in this capacity as a detective, and I interested Cheevers in helping me. I asked him to help me, which he agreed to do. You ask if I interested Cheevers in going around betraying his former employer; call it anything you want to, I don't care. "XQ. 209. Thereupon he was so anxious to soak his former employers that he assisted you to the extent of introducing you under an assumed name so that they would not get knowledge of the fact that you were a detective?" "A. You put that in a peculiar way." "XQ. 210. It is true, isn't it?" "A. No, he didn't

(Deposition of George H. Wilkins.)

have it in for him at all. He shook hands with Mr. Mayfield when they met.” “XQ. 211. He was sleek on the surface, he was doing the Judas Iscariot act?” “A. I couldn’t say. I never knew Mr. Mayfield or Mr. Cheevers before I saw them there. I asked Mr. Cheevers to assist me because he was a formed saloon-keeper and a former salesman,—had sold this stuff. I had a list of several people. Mr. Cheevers was the first one I went to.” [702] It was I who told Mr. Mayfield that I was going to be interested in the “Koke” business. That was a pretext to carry out the deception, and Mr. Cheevers, in assisting to carry out this pretext said that I was Mr. Walton. Cheevers wanted to help me out. You ask if he wanted to help me out, knowing that by so doing he would be injuring the company; I don’t know what he knew or what he suspected, but he helped me out. I suppose that was the result of his act, I don’t know. I had this conversation with Mr. Mayfield, August 27, 1913. I purchased these three green bottles, Exhibits #180, #181, and #182, in New Orleans. I took these bottles out with me after buying them because I wanted evidence that they were substituting and selling “Koke.” When I bought these bottles I knew all the time by looking at the bottles that they were not “Coca-Cola”—yes, sir; when I saw the bottle I did. But in the case of the Comus I did not see the bottle. The man wrapped it in a newspaper and handed it to me. No, I would not know whether it was a bottle of “Koke” or of ginger beer, if it was wrapped in a news-

(Deposition of George H. Wilkins.)

paper. When I saw the bottle I knew it was not "Coca-Cola." In the place where I did see the bottle before purchasing same, or at the time of my purchase, I knew it was not "Coca-Cola" I was purchasing, that is why I wanted the bottle. When I moved over to Dallas, Mr. Lupton gave me a list of people who were supposed infringers of "Coca-Cola." He told me that the list was made up from lists of people whose names the various drivers had turned in that were handling "Koke" and not "Coca-Cola," or who had quit handling "Coca-Cola." I have not kept a copy of that list now. The list for Dallas had probably 70 or 80 names as near as I can judge, it covered more than one sheet of paper and then there was some more in Ft. Worth. I got the Ft. Worth list from the bottler there, who claimed the same trouble. I bought two bottles in Ft. Worth and two in Handley. I did not find a bottle of "Koke" for sale in Dallas. In many places in Dallas I not only asked for "Coca-Cola" but I asked if they had "Koke" and they didn't have either. I went to every soft drink place and saloon and stand and confectionery and drug-store on the three or four main streets that I have noted in my report, and then these special places for syrup, got samples of syrup, and in the places noted especially in former reports, where people had been supposed to have carried "Koke." [703] I did not say that they never had handled it. I said they did not have it at the time I called, namely; in September, 1913. You ask if it is true that on the three principal

(Deposition of George H. Wilkins.)

streets in Dallas there are nothing but soda-fountains and no bottlers; no, that is not true. There are more saloons than any in the list, more than any other business. I did not see any moving picture shows on the main streets, but on the side streets there are a number of them.

I said these barrels which I saw in the back of both the New Orleans office and the Dallas office of the Koke Companies were painted dark red. In New Orleans I saw one "Coca-Cola" barrel standing outside with the "Coca-Cola" hard label on it intact. At the Dallas office I saw probably more than one. I saw one with some paper on it, but I could not see the whole barrel. They were all of dark red color, as near as I could tell. They were not a light pink color at all, nor a light pinkish red color. No, they did not have a kind of milkish pink color. You ask me to look at the two bottles which I bought in Ft. Worth; namely, Exhibits #187 and #188 and the two which I bought in Handley; namely; Exhibits #189 and #191; and to state what the difference is in the color of the substances contained therein; the two bottles in Ft. Worth look very much darker now than the bottles purchased in Handley. The latter are pretty near the color of ginger-ale. They will break very easily, don't shake them. They are what I would call a straw color. Those purchased in Ft. Worth have more of a reddish color. Of course, I do not know of my own knowledge who bottled these products, only by labels on the bottles. I do not know the contents of those bottles and do not know a

(Deposition of George H. Wilkins.)

thing about that. I do not know whether they were put up in the bottles by or under the authority of the Coca-Cola Company or any of its licensees. I do not know whether the people who bought these bottles, or the man who put them in the bottles, got hold of "Koke" labels or "Koke" crowns in some way and put them on some other substances. So far as I know, this stuff I bought at Handley might be a home-made root beer, but what I drank there was not. No, I couldn't tell that it was not "Coca-Cola" in all cases. It depends upon what condition it was in. You ask if I didn't know that stuff was not "Coca-Cola" as soon as I saw it; it [704] was not that color when I got it. It was about the same color as "Coca-Cola," as near as I could tell. They would not fool anybody that way now. You ask if I didn't know that these bottles were not "Coca-Cola" as soon as I looked at the bottles; in one case they were wrapped up. Of course, I could not tell what they were when they were wrapped up, but as soon as I opened the bundle and saw the bottles I knew that they were not "Coca-Cola." The "Coca-Cola" bottle has not the trademark "Coca-Cola" blown on the shoulder in all instances, but in most instances it has. When the word "Coca-Cola," blown on the face of the bottle, is facing you so you can see it, it is all right, but when a man handles a bottle in this manner (indicating) you can't tell what is on the face of the bottle. You say that, of course, if he covers it one couldn't tell whether it is a bottle or not, but you say you mean if I looked at it; if he hands it

(Deposition of George H. Wilkins.)

across I would know it was not "Coca-Cola." You ask if I would know that as soon as I saw the crown; to the best of my knowledge it would not be "Coca-Cola" with a "Koke" crown. I don't think you could see that at a glance. You ask if it would require careful study and a minute determination to tell the difference between "Koke" written on this crown and the words "Coca-Cola" written on the "Coca-Cola" crown; the whole general effect, if the red script was there, according to the way lots of people would think, might represent itself to be "Coca-Cola" and not "Koke." If I was not examining it closely I would take it for "Coca-Cola" and I think the ignorant or unsuspecting would do the same thing. No, I do not mean to tell you that that looks anything like "Coca-Cola" to me now because I have handled too many of them. I don't believe it did look to me like "Coca-Cola" the first time I saw it, because I was looking for "Koke." I knew a "Koke" label and "Koke" crown. You ask if I don't know that the bottle marked Plaintiff's Exhibit #187 is about the same size and shape bottle that is used generally in the trade in the soft drink business for nearly every kind of carbonated soft drink that is on the market; well, no, I could not testify as to that. I don't know what bottles they have used. Until I work on a case I do not pay much attention to the exact type and size of bottle, but I know these bottles, "Coca-Cola" and "Koke," are about the same as a [705] great many bottles I have seen that do not contain "Coca-Cola" and

(Deposition of George H. Wilkins.)

“Koke.” I do not know what they do contain, of course. You ask if I have ever seen any of the “Coca-Cola” bottles used for a drink known as “Grapine” or “Iron Brew,” strawberry soda and lemon soda; I have seen “Iron Brew” in Appollinaris bottles. They are called a “split.” I suppose bottles of the type of Exhibit #187 would be termed “split,” too. I don’t believe I have seen “Iron Brew” in “Coca-Cola” bottles with “Coca-Cola” blown in the glass, but I have seen “Iron Brew” bottles. Most of the soft drinks I got at Ft. Worth, Dallas and New Orleans were in this general style of bottle, but I do not know them as being “Coca-Cola” bottles. It is a bottle similar to this bottle, Exhibit #187. No, I do not believe I could tell from the shape of the bottle what was in it. Yes, sir, I have drunk quite a little bit of “Coca-Cola,” almost daily for several years. I have drunk it in Atlanta, Augusta, Savannah and Jacksonville. I have traveled through the South quite a bit. For months at a time I would be in one spot. When I went to St. Louis to see Mr. Van Deusen I introduced myself under the name of Mr. Walton. I could not do anything else when the letter said “Walton.” That was the only thing I had to introduce me and then I further misrepresented that I was interested in buying stock in this company. I don’t know whether I gained the confidence of Mr. Van Deusen by this fraudulent means or not. I know that I got what I asked for and found out some things. Yes, sir; I misrepresented myself in order to get confidential in-

(Deposition of George H. Wilkins.)

formation from him. The attorney for the Coca-Cola Company told me to get this information, but none of the misrepresentation was at his instance. They told me to get it. They did not care how I got it, I suppose. I don't know whether or not they knew that we was slick enough to get it by hook or crook. You say they would not have employed me if I had not been; I am not successful in every case, you know. Yes, I know a young man named Mansfield, I was instrumental at this time to get him to testify here, but I am not the one who found out what he knew. I called him up but I got his name from some Pinkerton reports. I never saw him until a few weeks ago. No, I do not know how many other products under the name of "Koke" are on the market now. [706]. I only know of one. I do not know how many such products were on the market in 1913 during the time I speak of. I only know of one—that is all I knew. In none of these cases in Ft. Worth or Handley do I know who bottled the goods or what was in the bottle or anything about it, except that people asked for "Coca-Cola" and that was served to them. I think I could tell who bottled the goods by the tickets, or the bottles, if I examined them, which I did in one place. At the concession at Handley, after I got the bottle wrapped up in the newspaper, I went to the back of the concession where they threw the empty bottles and there were about 12 or 14 cases of "Koke" with the bottler's name on the box, which was in one instance the Jersey Cream Company, Ft. Worth, and, in another,

(Deposition of George H. Wilkins.)

McDaniels Bros. I do not know, of course, whether or not this local dealer had just put these bottles into a box which formerly contained Jersey Cream. Mr. Van Winkle told me the Jersey Cream people bought so many gallons or barrels of "Koke" during the past thirty days. I don't remember how much. He also told me his principal customer in Ft. Worth was McDaniels, bottlers. I also got this information from the card index files of the Koke Company of Texas. The card I looked at specially, was McDaniels Bros. I took it out of the pile and asked Van Winkle what the number meant and he said it was the gallons bought on those dates. There was a date and then a number following.

Yes, sir, I have also been engaged in getting up other witnesses for the Coca-Cola Company, and I am assisting them in every way possible in the preparation of this case—that is, assisting Reed and Rogers, who are the attorneys for the Coca-Cola Co. No, I would not think that when a man gets to work on a case he naturally gets sort of partisan, but he does get enthusiastic. I do not think any more of the Coca-Cola Company than I did last week or the week before, not a bit more. I don't think any less of "Koke" than I ever did. Yes, sir; I have been in this for quite a little bit over a year. That does not change my opinion any. It does not make me partisan. I ask persons what they know to be true. If they know nothing, I am not interested in them. If they know something that will help the case, naturally I want to get everything that they

(Deposition of George H. Wilkins.)

know. [707] "XQ. 319. And if they know something that will hurt the case you forget that?" "A. Sure, why shouldn't I?"

Redirect Examination by Mr. ROGERS.

When I went on this expedition, I was not given specific instructions by any one in the office of Reed and Rogers, I was just told to investigate. I was not given any specific instructions as to how that investigation was to be made, I was absolutely a free lance. No, sir, in the course of my investigations I did not in any instance find anything that would in my opinion hurt the "Coca-Cola" side of this case. Yes, sir; if I had I would have reported it to my employers. I report everything I find, both ways. Yes, sir; I have seen genuine "Coca-Cola" barrels and have been in the plant there and in Dallas and in Ft. Worth and in Atlanta. As near as I can tell, the barrels that I saw in the plant of the Southern Koke Company, Ltd., at New Orleans, and of the Koke Company of Texas, at Dallas, were precisely the same color as "Coca-Cola" barrels. Yes, sir; the light was good so that I could see the color. In one case it was quite bright sunlight. In the other case the sunlight was not so bright; it was sort of diffused. The barrels were stacked up against the wall in such a way that the color could be seen only in the Dallas case. I could not see the bottom barrels, but I could see the ones where the partition ended and the glass began, and they were all the same color, this red color, and then, when I was taken out to the mixing tank, I could see the other head of the barrels.

(Deposition of George H. Wilkins.)

Even the mixing tank was painted the same red. There was a negro near this tank painting a small keg. There was a barrel partly painted and he wanted me to keep away from it. The paint was a red paint, the same as on the barrel. I spoke a few moments ago about some cards which I saw at the plant of the Koke Company of Tekla, at Dallas. Those are the cards that I testified a few moments ago were the cards containing the names of the customers of the Koke Company, and shown to me by Mr. Van Winkle. When he showed me these cards he said, "Here are the list of customers we have." [708]

Recross-examination by Mr. LITTLETON.

Yes, sir; I noticed quite a number of customers in Dallas on this list, but I do not believe I noticed any bottle customers. There were a number of customers' names and I could not tell whether they were bottle customers or not. I copied just a few names to verify. There were no dates on some of the cards. There would be probably a figure like 24, which would mean 24 gallons at some time. Some of those names I remember I looked up and they had neither "Koke" nor "Coca-Cola." You ask if I know whether or not the "Coca-Cola" Company buys second-hand barrels from cooperage people; yes, sir, I know a little about that. I probably don't know enough to qualify as an expert, but in conversation with Mr. James and Mr. Frank Killilen at New Orleans, he said that the Coca-Cola people would not take "Coca-Cola" barrels from him and he had to

(Deposition of George H. Wilkins.)

find a market for them so he sold them to vinegar people and oil people. He did not state why the Coca-Cola people would not take the "Coca-Cola" barrels. He dealt in barrels. (Mr. HIRSCH.—"It is admitted in this record that the Coca-Cola Company buys second-hand barrels. Mr. C. H. Candler testified that they did buy second-hand barrels, as I remember.")

(Plaintiff here tendered and offered in evidence Plaintiff's Exhibits #168 to #192, inclusive.)

Deposition of Phillip Jansen, for Plaintiff.

PHILLIP JANSEN.

Direct Examination by Mr. ROGERS.

I live in Chicago and have no occupation at present. I graduated from Ann Arbor, this town. I had an occasion last summer to make an investigation on instructions from the office of Reed and Rogers. I was instructed to visit soda-fountains and places selling soft drinks and to ask for "Coca-Cola" under the name of "coke," find out what different salesmen understood me to mean when I used the word "coke." This investigation was carried on in the city of Chicago on West Madison Street, North Clark Street and Cottage Grove Ave. On West Madison Street I started at the Lake and finished at Ogden Avenue, covering a distance of about two miles. I called at all the soft drink places in that district. On Cottage Grove Avenue I started [709] at 22d Street and went to Washington Park, a distance of about a mile and a half. On North

(Deposition of Phillip Jansen.)

Clark Street I started at Madison and went as far as Center Street, a distance of about two miles. I called at all the soft drink places on various streets mentioned within the boundaries mentioned. When I went in I would usually ask for a glass of "coke," sometimes "Coca-Cola." When I asked for "coke" I would watch and see where the syrup was drawn from in each case. In each instance it was drawn from the pump in the fountain or the pumps underneath the counter. I did not observe the labels or marks on the pumps in all cases, but in some I did. The fountains which were marked, and which I observed, were marked "Coca-Cola."

(By agreement of counsel, examination of this witness was interrupted in order to take the testimony of the next witness.)

Deposition of Edward T. Langan, for Plaintiff.

EDWARD T. LANGAN.

Direct Examination by Mr. ROGERS.

I am the owner of a lunch-room, tea-room, 55 E. Congress St., Chicago. Formerly I was a drug clerk for A. W. Adamick, at Chicago Avenue and Clark Sts. From the 15th of last May to the 15th of this May, I was manager of the soda-fountain and lunch at the Auditorium Pharmacy. For the last twelve years, I should say, I have sold "Coca-Cola," and I have been about the fountain so that I could hear people ask for drinks and know the names they use. When people order "Coca-Cola" they use various names to indicate their desire. Take it as a

(Deposition of Edward T. Langan.)

rule, a stranger coming in that you do not know will ask for "Coca-Cola," but a regular customer coming in, they get in the habit of talking to you and kidding you and they ask for, oh, lots of things, like "dope," "shot in the arm" and "coke." When a man asks at any of the fountains with which I have been connected for "coke" I understand that he means "Coca-Cola." I could not say that I have ever made any inquiries of people asking for "coke" as to what they mean because I always repeat "Coca-Cola"? and they always say, "yes," and when a man asks for "dope" or "shot" or anything like that, I turn around and ask them every time whether they mean "Coca-Cola" and they say, "yes." Ever since I have been in the business, about twelve years, a few would come in and ask for "coke." [710] I recall having an interview with a young man, Mr. Mayfield, who tried to sell me a product under the name of "Koke" a short time after I went to the Auditorium Pharmacy. He was in there, I judge, about five or six times during the Spring of 1913. I don't know exactly the words that Mr. Mayfield used, only he wanted to sell me "Koke," or some substitute. He claimed that it was made the same as "Coca-Cola" and it could be sold the same as "Coca-Cola" without anybody ever detecting the difference. You ask me to explain my last answer a little bit, and you ask if I mean that Mr. Mayfield told me that it could be sold for "Coca-Cola" when people asked for "Coca-Cola"; no, he said that the men who used to make "Coca-Cola" was now making this product,

(Deposition of Edward T. Langan.)

and, therefore, it was the same thing and it could be sold as "Coca-Cola." I did not purchase any of this product from him.

Cross-examination by Mr. LITTLETON.

I am 27 years old. I started in and was apprenticed a drug clerk and ran a soda-fountain, but of late years I have done nothing but take charge of soda-fountains and lunch. Yes, sir; I have dispensed some of the other cola drinks. I have dispensed lime juice and "Cola" and "Cola Mint," but that was not similar to "Coca-Cola." There is quite a difference. The name might sound similar, but it is made with mint in it. You can detect the flavor very readily. That has been on the fountain right along for the last ten years. Yes, it is the same color as "Coca-Cola." I have handled it and know that it has been on the market for the last ten years. It is made by Park Davis & Company, of Detroit. The drink I am referring to is "Lime Juice and Cola." I don't know who makes "Cola Mint." Neither the "Lime Juice and Cola" nor the "Cola Mint" tastes like "Coca-Cola." I have tasted both. The "Mint Cola" has only been on the market a couple of years. It is gone, now; we do not use it any more at all. I should judge it was on the market about four years ago. I have handled at the fountains and places where I have dispensed drinks both root beer and sarsaparilla. I should say that root beer is much darker than "Coca-Cola" whereas sarsaparilla is lighter. However, they are the same

(Deposition of Edward T. Langan.)

general color as "Coca-Cola," and it would be [711] hard to distinguish between them and "Coca-Cola" unless you had them side by side. They are all dark. There are so many other drinks which I have dispensed at my fountain of that dark color that I really could not begin to tell you how many of them I have dispensed. Almost all of the drinks are dark, say like ginger syrup, several different places make it dark. Vanilla syrup and coffee syrup is made dark. That is the general color for drinks at soda-fountains—just about—dark and red and brown. I have never handled or dispensed either "Afri-Cola," "Ko-Nut," "Cola-Nip"—"My-Coca," "Mar-Cola," or "Kola" or "Lemon-Cola." The "Lime Juice and Cola" and the "Mint Cola" are the only drinks of that class I have dispensed. I should not have said "Mint Cola." I said that more on account of the name. "Mint Cola" is a green drink and could never be mixed with cola in any way. No, I am not acquainted with the "Mint-Cola," that is the same color and taste as "Coca-Cola," and this "Lime-Juice and Cola" that I refer to is not the drink known on the market as "Lime-Cola." The latter is a different drink. So that I have not dispensed any of this great number of cola drinks that are on the market. I couldn't remember the names now by which these drinks are called for by the public in asking for them, but I have had people ask for one or two cola drinks, but we do not have them. Yes, sir; they also use the expression around Chicago, "dope," meaning "Coca-Cola."

(Deposition of Edward T. Langan.)

"Dope" means a drug, and when you speak of "dope" or a "dope fiend," that means a drug fiend, so that if they come in and ask for "dope" I wouldn't know what to give them unless they explained what they wanted. The word "dope" is a word that is used in a great many ways; a person will ask for the "dope on a base-ball game" and for the "dope on horse races," and newspaper people call news, dope,—"go out and get the dope of what transpired." In addition to "coke" and "dope" I have heard customers using such expressions as "shot in the arm," "eye opener," and, oh, various names; I could not remember them all. I do not know whether "shot in the arm" indicates an injection of cocaine or some drug. I have never seen anybody take it that way. All I know is that they came in and asked for "a shot in the arm" and kind of smile, and I say "Coca-Cola?" and they say, "yes." [712] Yes, I do know that cocaine, or morphine, is taken that way,—by an injection in the arm. That form of expression is equivalent to asking for some drug, and the same way with "dope." When they come in there and say "give me a dope," that is practically asking for a drug, a drug drink. You ask if I have heard or seen people who thought "Coca-Cola" had cocaine in it; they have never expressed their opinion to me. I have heard it discussed. I have heard people ask me if I thought there was cocaine in it;—more in a joke than any other way, though. They would be joking about it more to have something to say when they come in in the morning than anything else.

(Deposition of Edward T. Langan.)

They got off that joke sometimes about root beer—ask if there is any “dope” in this, or “dope” in that. I don’t know what they meant by “dope” when they said “dope” in such instances. I didn’t go into details and ask them what they meant. Yes, sir; I told them that there was not any “dope” in those drinks. You ask what I understood them to mean when I told them there was not any “dope” in there; that could mean various things. They would say “is there was any dope in it,” I would say, “No.” You say that when I said “no,” I understood that they meant something and you ask what I understood that they meant; I couldn’t say. You ask if I told them no when I didn’t know what they meant; just as I say, they were more kidding than anything else. I don’t know what they meant. You ask if I didn’t have an idea as to what they meant when I answered them and told them “No,” and if I was telling them it did not have a thing in it when I didn’t know what they were talking about; possibly I did. I don’t know what they make these drinks out of. You again ask me what I thought these people meant when they asked me if these drinks had “dope” in them, and what they meant by “dope”; it might be caffeine, the same as coffee. Possibly they could very well apply it to a drink made up of caffeine, or some dope like that, and, used in that sense, it means a cocaine or caffeine drink.

Redirect Examination by Mr. ROGERS.

Yes, sir; I said on direct examination that frequently when a man would come into my fountain

(Deposition of Edward T. Langan.)

and ask for "dope" I would say inquiringly, "Coca-Cola"? and I have never had anybody in response to [713] that inquiry say that "Coca-Cola" was not what he meant when he asked for "dope." No, sir; I have not any doubt from my experience what a person meant when he came to a soda-fountain and asked for a drink under the name of "dope." He meant "Coca-Cola."

Recross-examination by Mr. LITTLETON.

No other cola drink except "Coca-Cola" is sold up here to my knowledge, so that if a fellow wanted a dope drink and "Coca-Cola" was the only dope drink up here, naturally he would mean that, and, as I did not handle any other dope drink, I gave him the only dope I had—I repeated "Coca-Cola"? and he would say "Yes."

Deposition of L. Laurion, for Plaintiff.

L. LAURION.

Direct Examination by Mr. ROGERS.

I am in the real estate business at 22 Quincy St., Baltimore Bldg., Chicago, in which business I have been engaged for about six years. I recall an incident happening a year or so ago, in which I answered an advertisement in one of the newspapers and was called upon by a man, trying to interest me in the sale of a product under the name of "Koke." The way it came up, they had an advertisement in the paper and we answered it. They came back with a letter and wanted to know if we would interest ourselves in this proposition, which was manufacturing

(Deposition of L. Laurion.)

a drink similar to, or just like, the "Coca-Cola" at a large profit, etc., and went into the details as to the profit and as to those things. You ask if anything was said at that interview about the sale of this product "Koke" for "Coca-Cola" or as "Coca-Cola"; well, the inducement offered was, I think, that, seeing that "Coca-Cola" sold so well that just the same thing or may be better, that it would make a lot of money and could be sold for the same purpose. I couldn't say that they said they would sell it for "Coca-Cola" or under the name "Coca-Cola." I don't suppose they did sell it that way. No, sir, nothing was said about advertising the goods one way or the other.

(There was no cross-examination of this witness.)

Deposition of Charles E. Caspari, for Plaintiff.

CHARLES E. CASPARI.

Direct Examination by Mr. HIRSCH.

I am a chemist and reside in St. Louis, Missouri. [714] I received my professional education at Johns Hopkins University, Baltimore, Md. I taught chemistry for one year at Columbia University in New York City and for the last eleven years at the St. Louis College of Pharmacy in St. Louis. I have had quite an extensive experience in examining soft drinks during the past fourteen years. I have known "Coca-Cola" for about twenty years, and have examined it analytically on a number of occasions. I should say I have analyzed between 150 and 200 samples of "Coca-Cola." I have

(Deposition of Charles E. Caspari.)

had experience also examining products that are similar in appearance to "Coca-Cola" and have analyzed 300 samples of such products. When "Coca-Cola" is presented to me for identification the color is the first property which is examined. The first thing I do is to look at the color. The color of "Coca-Cola" is produced by caramel, which is commonly known as burnt sugar, obtained by heating sugar to a certain degree of temperature when the change known as caramelization takes place, converting the sugar into caramel. The caramel in "Coca-Cola" merely colors it. It has no other function whatever. Yes, sir, caramel is a cheap product. Yes, sir; there are other products on the market that these soft drinks could be colored with besides caramel; there is a number of dyes, both vegetable and synthetic, which might be used to color them in place of caramel. In my examination of "Coca-Cola" I have never found any cocaine in it, nor have I ever found any narcotic in it, but I have found a stimulant in it, which is caffeine. I saw Merchandise #5 manufactured at the Shaffer Alkaloid Works in Maywood, New Jersey, about three or four years ago. I went through the entire process from start to finish and watched everything in detail, even sealing the apparatus over night while I was away. I saw coca leaves and cola nuts there. The coca leaves were powdered very finely and then decocanized—that is, the cocaine was removed from them. I saw coca leaves and cola nuts used in the manufacture of Merchandise No. 5. 380 pounds of

(Deposition of Charles E. Caspari.)

coca leaves and 125 pounds of cola nuts to a batch were used in manufacturing Merchandise No. 5. The cocaine was taken out of the coca leaves before they were used in the manufacture of Merchandise No. 5. I have been in the plant of the Coca-Cola Company in Atlanta and have seen Merchandise No. 5 used there and have seen [715] it go into the syrup in the course of manufacture. Along in April, 1910, I received some samples from C. H. Candler. I tested them to see what they were and there was a difference between them in the flavor and in the odor. I would say that a little less than two per cent of Merchandise No. 5 is used in "Coca-Cola." It undoubtedly gives an odor and flavor to "Coca-Cola." I received three different samples of a product marked "Koke." One of them was received a number of years ago. I cannot say just exactly when, from Mr. Van Deusen; the second was received last summer on the 31st. of July, 1913, and the third was received this summer about July 20th. I analyzed these samples chemically. When I received the sample from Mr. Van Deusen I had a conversation with him in regard to it. Mr. Van Deusen brought me this sample for the purpose of determining whether or not it contained any cocaine, and, at the time, told me that he wanted an assurance that it did not contain any cocaine, because, as he explained it, if it did not contain cocaine that would make it a very much more salable product. I examined it as carefully as I could and I found a trace of something which reacted as an alkaloid, but which

(Deposition of Charles E. Caspari.)

was not present in sufficient quantity for me to identify as any individual substance—it was merely the slightest trace. I told Mr. Van Deusen that and he said, “Well, is it cocaine”? I said, “I don’t know, it came down where cocaine would be expected to come down, but whether it was cocaine or not I couldn’t for the life of me tell.” “Well,” he said, “it can’t possibly be cocaine because I do not use anything from coca in the manufacture of this.” I admitted that it probably could not be cocaine. He said something to me at that time about the use of celery in connection with the sale of this drink known as “Celery Cola.” I analyzed the “Koke” sample as to specific gravity, which I found to be 1.283 at eighty-eight degrees Fahrenheit. I found the sugar content to be 58.35 per cent. The caffeine content was .18 per cent. The phosphoric acid content was .30 per cent. I also made an analytical examination of the product sent me by the Southern Koke Company and found its specific gravity at 88 degrees Fahrenheit to be 1.262. The sugar content 54.2 per cent; the caffeine content .14 per cent and the phosphoric acid content .32 per cent. [716] The last sample which I got recently was obtained through the J. S. Merrill Drug Company of St. Louis. They wrote to New Orleans for it first and it was not supplied from there. They were told that it would be supplied by the St. Louis representative of the Southern Koke Company, which was the Western Koke Co. I analyzed that sample and obtained the following results:—Specific gravity 1.267 at 81 degrees

(Deposition of Charles E. Caspari.)

Fahrenheit; sugar 55.21 per cent; caffeine .16 per cent, phosphoric acid .30 per cent. I examined these samples to see whether or not they responded to my test for Merchandise No. 5, but they did not respond the same as my test in examining "Coca-Cola."

Coca leaves contain, in addition to the cocaine and allied alkaloids, a fat, a volatile oil, a resin, a wax, chlorophyll, tannin, cellulose, a substance known as hygrine, and minute quantities of calcium oxilate. The cola nut consists of caffeine, kolanin, tannin, starch, gum, resin, protein matter, cellulose and wax and theobromine. Cocaine does not in the least add anything to the flavor of a product, nor does caffeine. Plaintiff's Exhibit #193 is a bottle containing specimens of coca leaves and Plaintiff's Exhibit #194 is a bottle containing cola-nuts. These specimens show the whole coca-leaf and the whole cola-nut. They are some of the products which were used in making up Merchandise No. 5 and I saw them handed to you at the Shaffer Alkaloidal Works at the time I was there. Coca leaves and cola-nuts are not popularly known, and have never been. This product, which I said I saw the coca leaves and cola-nuts go into, is an element in the manufacture of "Coca-Cola," it goes into it.

Cross-examination by Mr. LITTLETON.

Yes, sir; I saw the process by which Merchandise No. 5 was made. That process is as follows: The coca leaf is first powdered very finely, and then mixed with about an equal bulk of sawdust, and to

(Deposition of Charles E. Caspari.)

that is added a sufficient quantity of a dilute solution of sodium bicarbonate, for the purpose of rendering the leaf alkaline in order to free the alkaloid. Then it is packed in a percolator and is extracted with toluene. After this extraction is complete and all of the alkaloid is removed—it being understood that the toluene, as it percolates through the leaf, drips and is collected—live [717] steam is blown up through the leaf, which has been exhausted of the alkaloids, to remove every trace of the solvent toluene. The leaves then are still in powdered condition mixed with sawdust and are changed from the original leaf only in having the cocaine removed. That is the de-cocainizing process. The toluene I speak of is not an oil; it is what is known as a hydrocarbon. Coal oil is a mixture of several different kinds of hydrocarbons, whereas toluene is an individual hydrocarbon. There is no toluene in coal oil. They come from different sources. Coal oil comes from petroleum and toluene comes from coal tar. The object of putting sawdust with the coca leaf is to make the extraction more easy. A large majority of drugs are mixed with some inert material. When they are extracted for the purpose of obtaining the active principle, whatever it may be, in order to make the percolation easier sawdust may be used, or exhausted bark or roots, what is commonly called marc, and some other drug is used as a dilutant; sand is sometimes used, to keep the mass from packing too closely. It is a mechanical reason, not a chemical reason. This makes the percolation easier

(Deposition of Charles E. Caspari.)

by separating the small particles of the leaf into which the leaf has been ground or powdered and keeping them from packing in that way. After the cocaine and the associated alkaloids are thus extracted from the leaf, some of the toluene remains in the leaf. Live steam, I don't know at what pressure, is then driven through the leaves for the purpose of removing the toluene that remains in them, and which is volatile, with water vapor. I could not tell you exactly about how long the steaming process is carried on, but it is carried on until the toluene is removed, whether it takes ten minutes or four hours. Aside from the alkaloids in the coca leaf, some of these other properties I speak of are largely volatile and some of them are not. By volatile I mean that in its broadest sense, not in the sense that if you put it on a table it would volatilize like ether or alcohol. It would not do that. The tannin and the chlorophyll are volatile, some of the oil would be volatile. Some of the oil in coca leaves is an essential oil, and by essential oil I mean one that can be volatilized without decomposition. Some of that would go off, and, perhaps, the least bit of resin. That is all I think could be volatilized. [718] No, wax is not volatile, and you did not understand me to say a minute ago that Chlorophyll and tannin are volatile, because they are not. There is nothing else that is volatile in the coca leaf except the substances above mentioned; namely, some of the oil in the coca leaf and perhaps the least bit of resin. The other substances in the coca leaf are not vola-

(Deposition of Charles E. Caspari.)

tile. I cannot tell you the quantities in which these substances, aside from the alkaloids, are present in the coca leaf because I don't know. I have never made any quantitative analysis of them and I do not think it has ever been done by anybody. I testified in the case brought by the Government against the Coca-Cola Company in the Federal Court at Chattanooga that I did not know how to determine quantitatively the amount of tannin in the coca leaf and I don't believe anybody else does. No, I do not think that almost all of the properties of the tea leaf would be driven off if tea leaves were steamed with sixty pounds pressure of steam for four hours. Under that pressure I guess the caffeine would be driven off and probably the volatile oil, but I would venture to say that if you would dry the residue that is left it would form at least ninety-five per cent of what you had to start with. If tea were mixed with sodium bicarbonate and then treated with a hydrocarbon such as toluene, coal oil, or benzine, the chief thing that would be extracted from the tea would be caffeine, and there might, also, be a trace of chlorophyll removed. This chlorophyll is a substance which is common to practically all green vegetation. It has a characteristic property—that is, you can identify it when you get it. You can identify it by several different reactions. For example, the mere fact that it shows different colors by reflected light, and by transmitted light, is characteristic of it. Look at chlorophyll by reflected light, it is a sort of plum color. Look at it by transmitted light, it

(Deposition of Charles E. Caspari.)

is a green. I do not suppose chlorophyll has any physiological properties, but it has chemical properties. I am not prepared to say that chlorophyll has no taste. I have never tasted it, and I do not know. Yes, sir; it is an inert substance, no question about that. If the steam in this process is at the pressure that you mention, sixty pounds, I suppose the wax would soften up considerably, but I don't think any of it would be driven out. [719] Wax is not volatile with steam like toluene is. Cellulose is not an inert substance, but it has neither taste nor smell nor has it any stimulating qualities. I am quite sure, however, that it has a food value, which is the food value of any carbo-hydrate. I do not know the amount of cellulose in the coca leaf. I should say it was pretty great. You ask how I can say whether it is great or small if I don't know the amount; oh, very easily. You can tell whether a man is fat or thin, can't you, without telling what he weighs? By the same principle you can tell whether a thing predominates or not, even though you cannot tell just how much is there. Of all these substances left in the leaf after the alkaloid has been extracted, I should say the celluloid and protein predominate. I include the protein with the cellulose because the two are so intimately related in the leaf that you cannot well consider one without the other. No, I would not say that the tannin is present in the coca leaf in an infinitesimal quantity. What would you consider an infinitesimal quantity? A tenth of a per cent? You say you mean compared with the total substance of the leaf; well, now, the

(Deposition of Charles E. Caspari.)

cocaine itself is the most valuable thing in the coca leaf, and that is only there to the extent of one-half of one per cent. That might seem infinitesimal, but that is the most important thing there, so far as the commercial value of the coca leaf is concerned. The tannin comes somewhere, I should say, between zero and one per cent. The balance of the substance left in the coca leaf, after the alkaloids have been extracted, have the characteristic taste of coca leaf, with one exception, perhaps. It might not be quite as bitter after the extraction as it was before. The combination of ingredients in the leaf other than the alkaloids is what gives it that characteristic taste. No one ingredient alone imparts that taste. No, all of the ingredients left in the leaf do not have a taste. I have said that cellulose has no taste. It is just some of those ingredients that give the leaf its taste. I should say all of the ingredients do so except the cellulose. I said I do not know whether or not chlorophyll has a taste because I have never tasted it, and therefore do not know whether that imparts a taste or not. Then there is certainly one, and maybe two, ingredients that do not impart a taste. [720] The wax imparts the taste of coca wax. I could not identify a taste by a description. You might ask me what beeswax tastes like. I could not tell you, and yet, if you would give me a piece to chew, I could tell you it was beeswax. I should say that this wax also imparts an aroma because all waxes do. The other things which give taste and aroma are the tannin and the oil. You ask if this combined

(Deposition of Charles E. Caspari.)

taste is a strong or a weak one; there, again, you will have to qualify that more. I don't know what you mean by a strong taste or a weak taste. It is quite pronounced. If you use this Merchandise No 5, it is quite a pronounced taste.

Now, after having extracted the alkaloid and having steamed the coca leaf, the balance of the process of making Merchandise No. 5 is as follows: The coca leaf is then mixed—understand, now, that we have 380 pounds of it to start with—with 125 pounds of cola nuts, and they are exhausted with an *ancohol* of about eighteen to twenty per cent in strength. This is then racked off and pasteurized and is then the finished product. That makes about nine hundred gallons of finished product,—the 380 pounds of coca leaf and 125 pounds of cola-nut, when treated in this manner make about 900 gallons of Merchandise No. 5. In making these percolations about 900 gallons of 18 to 20 per cent alcohol are used. I have seen them put this Merchandise No. 5 in “Coca-Cola.” In making soda-fountain syrup they use about 16 gallons of Merchandise No. 5 to make 1250 gallons of the syrup. It is about 16 gallons—I thought it was 18. In making the bottlers' syrup they use about 13 gallons of Merchandise No. 5 to make 1250 gallons of the syrup, as near as I can remember. I know it amounts to a little bit less than two per cent. In the extreme diluted form in which bicarbonate of soda is used in this process I do not believe it would have any effect at all upon any of the ingredients of the coca leaf aside from

(Deposition of Charles E. Caspari.)

the alkaloids. No, the oils which I referred to remaining in the coca leaf would not necessarily be extracted by the toluene in the percolation process. That is paramount to saying that all oils would be soluble. Some oils undoubtedly would, and some would not. The oils in the coca leaf, I believe, would not be; at least, not entirely. Some of them might be extracted, but I cannot say that they are. [721] I have never made a demonstration to prove that they are not, but I know that the extract which is made from the de-cocainized leaves after the treatment with toluene has a distinct flavor and odor of its own. You ask if the action of the toluene as a whole on the leaf would have a modifying effect on the other ingredients of the leaf, leaving out of consideration the alkaloids; I can only answer that by saying, no. It would not have any effect at all. It does not have any effect on the alkaloid there. It dissolves it, but that is not an effect on the alkaloid in the way I understood you to mean it—affecting it in some chemical way. It affects it to the extent that it removes the dissolved alkaloids. I do not believe it would affect in any way the other ingredients of the leaf. I have made a number of determinations of Merchandise No. 5 and in each instance it had the same amount exactly of caffeine. The only other ingredient which I determined quantitatively in Merchandise No. 5 was the alcohol, and that varied from 15.76 per cent to 16.2 per cent. But you will remember that sixteen gallons of Merchandise No. 5 are used in 1250 gallons of “Coca-Cola” syrup,

(Deposition of Charles E. Caspari.)

so that there is less than two per cent of Merchandise No. 5 in the syrup. The variation of two or three-tenths of a per cent of alcohol in Merchandise No. 5 could not by any known means be detected in the syrup. The last time I analyzed Merchandise No. 5 was a few months before the trial above referred to at Chattanooga. I stated that in my analysis I determined that there was chlorophyll and tannin in Merchandise No. 5, but I did not determine the quantity. All I determined quantitatively was the alcohol and caffeine. I did not determine anything else quantitatively. I don't know whether as a matter of fact you can determine quantitatively anything else besides those four substances, tannin, chlorophyll, alcohol and caffeine in Merchandise No. 5. I have never tried to. I do not know whether the presence of the other substances could be detected or not. I have never tried it. I dare say with enough material available and enough time at one's disposal, it could be done. [722]. If a strong concentrated flavoring extract taken from the peel of oranges, lemons, limes and eight or nine strong flavoring oils like that, were put into 1250 gallons of syrup similar to the "Coca-Cola" syrup in the quantity of about twenty-seven and three-fourths gallons, being in a solution of alcohol to preserve it, such extract would tend to flavor the syrup and would add an aroma thereto. You would know it was there, certainly, and if vanilla were added to it, that would tend to give it a flavor also. If this strong flavoring extract were put into this syrup in the quantity

(Deposition of Charles E. Caspari.)

stated, namely, about twenty-seven and three-fourths gallons to the twelve hundred and fifty gallons of syrup—about two and one-half per cent—that would be a larger *thantity*, of course, of flavoring than the Merchandise No. 5, but it would not necessarily be more pronounced. If you put in your twenty-seven and three-quarters gallons of flavoring which you have indicated, consisting of orange peel, lemon peel, limes and essential oils dissolved in alcohol, you could not pick out in the first place, in that flavor by itself any predominating flavor; it would be a blend; and, if you added vanilla to it, again you would change the blend;—change the flavor,—but you would still have only a blend. Now, when you mix all that flavor which you have blended with the flavor which was derived from Merchandise No. 5, you again have a blend, and you have not the flavor of No. 5, nor have you the flavor of vanilla, nor have you the flavor of orange, nor have you the flavor of any one of the single ingredients which you have added; but you have got a composite flavor which is made up of all of them. That is perfectly analogous to extract of vanilla, which contains, as its chief ingredient, vanillin, and yet, if you make a solution of vanillin in alcohol or water, it is not identical with the odor of extract of vanillin, because one is a single substance and the other is a blend. That is what you have in “Coca-Cola.” You have a blend of various ingredients and no single one predominates. If eight gallons of the flavoring extract were put into the syrup in the pro-

(Deposition of Charles E. Caspari.)

portion of nine parts of alcohol to one of extract, and were put into twelve hundred fifty gallons of syrup, that would also tend to flavor it, but the flavor would not be the same as it was before. [723] It would be a different flavor. You ask the direct question whether or not the presence of Merchandise No. 5, in the quantity stated, in 1250 gallons of "Coca-Cola" syrup, adds any appreciable flavor to the drink whatsoever; it certainly does, and the evidence of that is this: That two bottles were sent me, one of which contained "Coca-Cola" syrup made with No. 5, and one without No. 5, and I was asked to see whether I could distinguish any difference between them in the taste and odor, and there was a very marked difference, a pronounced difference. Anybody could tell the difference right off. So that a drink that was made without Merchandise No. 5 could not possibly be taken for a drink that was made with Merchandise No. 5, if you drink the syrup alone. If the two drinks were made pretty much the same way, along the same line, only one had in it Merchandise No. 5 and the other did not, there would be no difficulty in distinguishing between the two in the form of syrup. If you added carbonated water as you do to make a drink of "Coca-Cola," I could not say that you could tell the difference, because I have never tried it. I tried the syrup without being diluted in water. While the water would not add any flavor to the syrup, it would dilute it. If you added the same quantity of water to the "Coca-Cola" syrup as you did to this other syrup

(Deposition of Charles E. Caspari.)

made without No. 5, they would both be diluted to the same extent, but the question is whether or not by such dilution the difference would not disappear. I do not know as a matter of fact whether or not the difference would disappear. That is not a chemical question that can be answered without trying it. The addition of that much water will modify any syrup, I don't care what it is. It will simply weaken the flavor, and it is possible, by going far enough, to conceive that the dilution would annihilate a flavor. I can conceive of flavors being so highly diluted that you could not recognize some of them, although you knew some of the flavor was in there. You can pitch the strongest flavor in the Atlantic Ocean and it will be annihilated, and I have drunk tea that was annihilated. No, that was not tea that had been steamed four hours, I think it was too much water. No, the addition of seven ounces of carbonated water to one ounce of "Coca-Cola" syrup would not destroy the flavor. I am unprepared to say whether it would destroy [724] the flavor of a drink made in pretty much the same way as "Coca-Cola" syrup only without Merchandise No. 5, because I have never tried it. But I do know that there are a number of imitations of "Coca-Cola" on the market that can be readily detected on account of the flavor, even when they are drunk. You ask if it could be detected by a person who is not an expert; well, I don't know that you can talk about an expert in drinking "Coca-Cola." One who has drunk a great deal of it might tell the difference.

(Deposition of Charles E. Caspari.)

Take a person who has not drunk much "Coca-Cola" and does not know much about the flavor of it and a substitute could be much more easily palmed off on him than a man more familiar with "Coca-Cola." But if there was a marked difference in the flavor, of course, he would not be deceived. I have been doing work for the Coca-Cola Company, I should say, five years. (Mr. HIRSCH.—"It will be five years in November, exactly correct.") I have testified in one or two other cases as a witness in their behalf, and I analyzed the "Koke" syrup which I spoke of in this case at their request. You ask if I did so in order to qualify myself as a witness in this case; I do not know why I did it. I did it because I was asked to, that is the only reason I did it. No, I did not know that I was going to be called on to testify about it, that is, I did not know it positively. As far as I know the suit had not been brought when I made the analysis. I made the first analysis last summer, over a year ago. (Mr. HIRSCH.—"We will admit, on behalf of the Coca-Cola Company, that we asked him to analyze it because we were going to bring suit. I do not know whether Dr. Caspair knew it or not.") I reside in St. Louis, Mo., and came all the way to Chicago to testify in this case. The Coca-Cola Company has not yet paid my way up here, but I suppose they will. I came voluntarily and did not have to be urged to come, I always like to come to Chicago. I made the first examination of this "Koke" syrup I spoke of that I got from Mr. Van Duesen at Mr. Van

(Deposition of Charles E. Caspari.)

Duesen's request. That examination I cannot remember exactly, but I should say it was about four years ago. I cannot remember any more closely than that. It may have been five years ago. It may have been three years ago. I have no recollection of that date, no accurate recollection. The syrup I spoke of as having come from the Southern [725] Koke Company came to me with a label on it signed by the two men who brought it there. The label stated that they brought it there. (Mr. HIRSCH. "As far as we are concerned, Dr. Caspari did not get it direct from the Koke Company or its allied interests." There is nothing on the bottles containing samples of coca leaves and cola-nuts marked Plaintiff's Exhibits #193 and #194 respectively for me to identify them as the goods I got three or four years ago from the Schaffer Alkaloid Works except that I saw them handed to Mr. Hirsch at that time. There is nothing there to indicate to me that these are the same bottles except the appearance, shape and size. I know that the bottles were like that, but I do not know whether it was these identical bottles, or all the identical contents. He may have taken them out and put them in other bottles the same size, same shape, same color, and all.

In describing the process of manufacturing Merchandise No. 5, I testified that the coca leaf is treated with bicarbonate of soda in very dilute solution, the object being to free the alkaloid in the leaves so that it can be dissolved and taken out by the solvent. That alkali, the bicarbonate of soda, still remains in

(Deposition of Charles E. Caspari.)

the drug after it has been treated with the solvent. Then this drug is soaked for several days in a volume of six or seven or eight times its volume—I cannot answer that accurately because I do not know positively—of the solvent toluol; the toluol was probably approximately eight times in volume or weight of the amount of the drug used. This drug is treated for the extraction of the alkaloid by the process of maceration and percolation. Of course, the toluol that first comes off is much richer in the alkaloid and the last of it contains practically no alkaloid at all. As I stated before, it is possible that some of the other ingredients in the coca leaf might, to a certain extent, have been removed by the toluene, but there is certainly enough left there to give the extract which is made subsequently a clear flavor and an odor. I am familiar with the process of percolation by which alcohol is recovered from exhausted drugs. This process of recovering the toluene from coca leaves is in a broad way identical with the process for recovering alcohol from exhausted drugs; with [726] this exception; that in the case of alcohol you do not need, perhaps, as high a temperature to drive off the last trace of alcohol, but the process is generally the same. Steam at sixty pounds pressure will be two hundred fifty-seven degrees Fahrenheit. I cannot say accurately as to the time required by this process of distillation to remove all the toluene from the drug,—I should say a couple to several hours, which might mean from two to five, depending upon the quantity of the compound to be made up at that time chiefly,

(Deposition of Charles E. Caspari.)

and on whether the steam was exactly at sixty pounds pressure or a little less or a little more. No, I do not know it to be a fact that a current of steam at a temperature of two hundred and fifty-seven degrees passing for several hours through a vegetable substance would have a tendency to remove from it everyting of a volatile nature existing in the drug so treated. I do not believe that that is true in every instance. The only way to decide that will be to actually make a test of whether there is anything volatile left in there after that experiment has been made. You know that many substances which are volatile are very much more volatile or less volatile than others. No, it is not true that if a substance were treated by a current of hot steam at a temperature of two hundred and fifty degrees Fahrenheit for from two to five hours that all of the substance which is volatile would be carried away in every drug that could be so treated. I know of an instance where that would not be true. That is, the distillation of ajowain seed for thymol. That happens to be an instance where the substance is difficultly volatile and where it takes a very long time and a very high temperature to get it all out. That might be considered an exception to the general rule. Now, I would like to make a statement there to this effect: That admitting, merely, for the sake of argument—I do not admit it absolutely, but only for the sake of this statement—that everything volatile in the coca leaf was removed by this live steam that is passed through it, nevertheless the fact remains that the extraction of that product with

(Deposition of Charles E. Caspari.)

dilute alcohol after the steaming yields an extract which has a distinct color, flavor and odor, which must be due to something. Yes, sir; I find a relation between this color, taste and odor which is yet contained in the drug to the natural odor of [727] coca leaves; it reminds you of it. No, I won't admit that this process for de-cocainizing coca is a rugged, harsh process to which to subject a drug, expecting to obtain from that drug any of its natural properties after having been so treated, because the prime object of this treatment in the first place is to remove the cocaine and the alkaloids. They must be taken out absolutely so that not a trace is left. That requires the treatment as I have explained. That is the prime object of the process. Now, then, after the cocaine has been removed and the residue is harmless so far as its physiological effect is concerned, then an effort is made to remove from it the remaining odoriferous and flavoring principles that may be there, and that is done by extraction with the twenty per cent alcohol. No, if you were to take a sample of tea, treat it with an alkali as explained, soak it for several hours in toluene, drive off the toluene by several hours of distillation with a high pressure of steam of two hundred and fifty-seven degrees Fahrenheit, in which a very large amount of water is obtained in distillate, I do not think that the tea so treated could be made into a presentable article for drinking, because we drink tea primarily for the caffeine which it contains and that would be removed in this process which you describe. But not only

(Deposition of Charles E. Caspari.)

would the caffeine be removed, but its taste would be entirely modified, and yet I have seen large masses of tea leaves which have been exhausted by coal oil for the purpose of obtaining the caffeine from them and have subsequently been steamed to get all of the caffeine out, and that mass of exhausted tea leaves still has distinctly the odor of tea leaves.

I am not employed by the Coca-Cola Company. By that I mean that I am not under any retaining fee by the Coca-Cola Company, nor do I draw a salary from them. I am paid for each piece of work I do separately. I have not yet been paid for the work done in preparing myself to testify in this case, but I am to be paid. You ask if I am what is termed a paid expert witness; I will answer that by saying, [728] first, that I do not know what the qualifications are for a paid expert witness. I am an expert witness, and am paid for my services as such, just as an expert lawyer is for his services.

Samples 193 and 194 are in the same condition now as when received from Schaeffer Alkaloidal Works.

Deposition of John A. Wesener, for Plaintiff.

JOHN A. WESENER.

Direct Examination by Mr. HIRSCH.

I reside in Chicago, Illinois, where I have resided since 1889. I am a consulting and analytical chemist and have been such since 1889. I received my technical education at the Michigan Agricultural College and at the University of Michigan. I graduated from the University of Michigan in the year

(Deposition of A. Wesener.)

1888, receiving the degree of analytical chemist. I received my degree in medicine from the medical department of the University of Illinois in the year 1894. I have taught chemistry at the Chicago College of Pharmacy, which is now the Pharmacy Department of the University of Illinois, and at the American Dental College, which is now the dental department of the Northwestern University, and I held the chair of chemistry in the medical department of the University of Illinois for twelve years.

I am familiar with the drink known as "Coca-Cola" and have known it for at least about twelve or fifteen years. I am the same Dr. Wesener who testified in the case of the United States Government versus Forty Barrels and Twenty Kegs of Coca-Cola. Yes, sir, I have analyzed the product known as "Coca-Cola." From looking at the drink, the way I would first determine whether a product was "Coca-Cola" or not, is by its general appearance and color. The color in "Coca-Cola" is produced with caramel. I think the only function which caramel performs in "Coca-Cola" is to give it its color. I would say I have made a great many analyses of soft drinks, probably over a hundred, possibly two hundred. I have seen "Coca-Cola" manufactured and I have seen what is known as Merchandise No. 5 manufactured at Maywood, New Jersey, by the Schaeffer Alkaloid Works. I have tested "Coca-Cola" several times for the presence of cocaine and have never found it to be there. But I have found caffeine in "Coca-Cola." I have made an investigation in regard to the effects

(Deposition of A. Wesener.)

of caffeine, or the effect of "Coca-Cola," in so far as to ascertain whether or not it is [729] deleterious, and "Coca-Cola" is not deleterious. When I saw Merchandise No. 5 manufactured by the Schaeffer Alkaloid Works, of Maywood, New Jersey, there were coca leaves used in its manufacture. The cocaine was taken out by a special process, devised, as I understand, by the late Dr. Schaeffer, and cola nuts were also used in the manufacture of No. 5. I have been to the factory of the Coca-Cola Company of Atlanta and have seen "Coca-Cola" manufactured there, and I have seen this compound described as Merchandise No. 5 go in and make up the manufacture of "Coca-Cola." I have seen it actually put in. No, during the period around 1889, or from 1886 up to 1892, there were not any substances, or any products or articles, popularly known as coca and cola to my knowledge. These products, as used by the Coca Cola Company, have become popularly known since then, as the name "Coca-Cola."

Cross-examination by Mr. LITTLETON.

It is true that the United States Pharmacopoeia speaks of coca under the name coca, and it has in small letters there "coca foliae, or coca leaves," but it treats of the product coca under the name coca without adding the leaves to it, but I would not consider the United States Pharmacopoeia a popular work. I think possibly it is true that coca was bought and sold commercially under the name coca prior to 1886, and that while they have in some instances used the name coca leaves, the word coca was

(Deposition of A. Wesener.)

used commercially in designating this product, or drug, or plant. The word coca was used in that way among the drug trade, but not in a popular sense, and the common expression was usually erythroxyton coca, or coca leaves, and that was used, of course, among the druggists and the pharmaceutical trade, never used that way in the popular trade. I would say that if the word coca was used in combination with other words to designate other products that the laymen understood that as being chocolate. That would be the popular sense. I do not think for a moment that they would have thought that that was coca, erythroxyton coca, or had any relation whatever to the cocaine plant. Yes, sir, I am familiar with Wine Coca. Yes, sir, I think I have seen the labels that were used on the old bottles of Wine Coca showing pictures of coca leaves and [730] cola nuts thereon, but I think that was sold under another name there. I forget that other name, I think there was a distinctive name for that product. I am not familiar with the fact that Dr. Pemberton made a product called "Pemberton's French Wine Coca." No, I do not know that products similar to that Wine Coca were sold in large quantities in commerce for a number of years prior to 1886, and I do not think that even the Wine Coca—that is, this French preparation that I have in mind—was very popular. It is true that Parke-Davis & Company, of Detroit, manufactured for a great many years a preparation of this character and sold it extensively throughout the United States, but they sold that as a medicinal pre-

(Deposition of A. Wesener.)

paration. I could not consider that a popular drink. A medicinal preparation would not be popular. Certainly quinine is a medicinal preparation. It became popular on account of the extensive malaria that this country suffered from at one time.

Caramel has been in use as a coloring matter for beverages, oh, for a long time, a great many years. I would say that it was used prior to the civil war. Yes, sir, it is now a uniform coloring matter which is used extensively in coloring all kinds of drinks. It is one of the oldest coloring matters on the market and is perfectly harmless. Yes, sir, I think that root beer and sarsaparilla and Moxie and drinks of that character were on the market and sold prior to 1886. I could not say as to whether or not they were colored with caramel at that time because I never made any tests at that time, but caramel could have produced the color that they had.

You ask if the exhausted coca leaves, after the alkaloids have all been removed and the leaves have been subjected to a steaming process and most of the properties driven out of the coca leaves, then this refuse material is used in making Merchandise No. 5 in answering the question I would have to state that I would not consider this residue left after extracting the alkaloids from coca leaves as waste material. It is the residue that contains various principles which are very essential to the manufacture of "Coca-Cola" syrup. I do not know for certain whether or not Dr. Schaeffer's Alkaloid Works, for a long time before it began to make this Merchandise No. [731] 5,

(Deposition of A. Wesener.)

was a large manufacturer of cocaine, I think Dr. Schaeffer spoke of that, at the time I visited the plant, but I am not absolutely sure about that. (Mr. HIRSCH: "I will admit it in the record that he was.")

You ask if they extract the cocaine from the coca leaves in the process of making cocaine in substantially the same way as they do in making this No. 5; well, they use a similar solvent in removing the cocaine from the erythroxylon coca. Yes, sir; they take the cocaine out in the same way. It is one of the processes of removing cocaine from coca leaves. You ask if, prior to the time that Dr. Schaeffer began to make this Merchandise No. 5, he did not destroy the coca leaves after he had extracted the alkaloids from them and throw them away, as refuse material; well, I could not say what he did with the exhausted coca leaves, I am sure; but whether he did or did not burn them does not alter the fact that the leaves did not still have some valuable principle left in them. I do not know of any other use to which the exhausted coca leaves, after being treated in the manner in which they are treated in making Merchandise No. 5, have ever been put to by anybody except to be put into this Merchandise No. 5. So far as I know they have never been put to any other use. But I might say there that you take exhausted vanilla beans, take out the most of the flavor,—that is, the vanillin and the musk contained in the vanilla beans,—still there are very valuable properties left in the exhausted vanilla beans, but the stupid manufacturer has never had

(Deposition of A. Wesener.)

sense enough to improve his process to get out the other good principles left in the vanilla bean. In other words, you could get five times as much vanilla extract out of the vanilla bean as what is obtained by the average manufacturer to-day, because he is using an old, ancient, antiquated method of exhausting or extracting, vanilla beans. He gets out all the vanilla by his process but he does not get out all the best flavors of the vanilla bean by his crude method.

[732] The characteristic property of coca, or the coca leaf is due to its predominant alkaloid, cocaine. The characteristic property of cola, or cola-nut, is caffeine, and the theobromine. From a strictly chemical and medicinal standpoint, the characteristic property of the coca leaf is removed in making this Merchandise No. 5, but not from a food standpoint or flavor standpoint. When I say food standpoint, of course, I include in that condiments and "Coca-Cola," that is, coca leaves minus the cocaine, still would be considered as a condiment. Coca leaves would not have the same taste and flavor with the alkaloids removed as they have with the alkaloids in them—they might have the same taste and flavor, but there would be one essential difference that the anaesthetic character of the coca leaf would be removed. I would say that the taste and flavor would be pretty much the same excepting that probably it would be a little less bitter and it would not have this local anaesthesia or numbness. I would say that there would be very little difference in flavor between "Coca-Cola" made from Merchandise No. 5 in which the alkaloid

(Deposition of A. Wesener.)

had been extracted and made from Merchandise No. 5 in which the alkaloid had not been extracted from the coca leaves because there is very little of Merchandise No. 5 used, and, therefore, the small percentage of cocaine still left in Merchandise No. 5 would be negligible as to taste. The fact of the business is that the quantity of Merchandise No. 5 in the drink at all is very little; it is less than two per cent, as I understand it. I should guess there is about eighteen gallons of the No. 5 to twelve hundred and fifty gallons of the syrup. I would not want to be certain about that unless I could look up my old records on the subject. I have examined "Coca-Cola" syrup made with Merchandise No. 5 in it and made without Merchandise No. 5 in it, and there was quite a difference as to taste. The Merchandise No. 5 gave the syrup a character which was very distinct, and, without it, it did not seem to have the same flavor, to my taste. I had no trouble at all in telling one from the other when they were put before me as unknown mixtures. I did not know what was in either one of the bottles excepting that I know one was supposed to contain Merchandise No. 5 and the other was to be without Merchandise No. 5. [733] I might elaborate a little more on this question of yours. There are many flavors that are used in drink and food in which the flavor has been put in, loses its character and identity absolutely. Take, for example, Creme de Menthe, this French drink, which is a cordial. To drink that you would believe that it is simply composed of alcohol, syrup, and a very

(Deposition of A. Wesener.)

fine quality of oil of peppermint. If you were to make such a mixture up for your analysis you would find you would have a very, very harsh drink as compared to Creme de Menthe, for the reason that the Creme de Menthe contains vanilla flavor. You do not taste the vanilla in that at all, but that smooths it down and makes it a beautiful blend. The same thing is true of this white crystal syrup, a corn syrup put out by the Corn Products Company. They put on that label "flavored with vanilla." That does not mean that it has a vanilla flavor, but that it is flavored with vanilla. You cannot taste the vanilla in it at all, but if you were to omit the vanilla flavor in that white corn syrup you would have a very inferior tasting product. That smooths it off and secures a very characteristic flavor which the consumer wants. I believe the same thing is true with reference to using Merchandise No. 5 in the manufacture of "Coca-Cola." It gives character to the drink, which, without it, it would not have. I could tell it right off if it did not have Merchandise No. 5 in it. The "Coca-Cola" syrup is only an ingredient of the beverage "Coca-Cola" as it is finally dispensed to the public. In making the beverage from the syrup about six or seven ounces of carbonated water are added to the syrup. You ask if the quantity of Merchandise No. 5 that is in the syrup is not so diluted when the water is added to it that it is inappreciable in the beverage—in the finished product; it was not to my taste because I drank it that way. I diluted it with carbonated water because that was the only

(Deposition of A. Wesener.)

way to make an honest test. Yes, sir, I tried the beverage,—that is, the syrup diluted with carbonated water with No. 5 in it and without it and I could readily tell the difference between them.

Redirect Examination by Mr. HIRSCH.

Parke-Davis & Company make up one product which is known as fluid extract of coca and another product known as fluid extract of [734] cola, but I have never known them to be combined. They are medicinal products. One four-hundredth of one per cent of cocaine would not have any appreciable effect whether of taste, or flavor, or physiologically—that is, on a man, on the average person. I understand that Dr. Schaeffer has a separate and distinct process for making Merchandise No. 5. I saw that process used. I understand it is an invention of Dr. Schaeffer's.

Recross-examination by Mr. LITTLETON.

You asked in what respect Dr. Schaeffer's process for making No. 5 differs from the process for making cocaine; well, I don't know as I know the standard method or process of making cocaine—that is, of producing cocaine from coca leaves. But Dr. Schaeffer uses toluene, which ought to take out the cocaine and leave a great many other parts in the leaves, whereas if you were to take out the cocaine by another solvent, such as alcohol, etc., you would take out a great many other products from the coca leaf which toluene would not remove, and for that reason I cannot answer your question how that differs, because I am not certain that all manufac-

(Deposition of A. Wesener.)

turers use toluene in extracting cocaine from the leaves. I do not know that toluene is the best solvent for taking out everything from coca leaves. There may be other solvents that will take out more products than the toluene, whereas toluene may simply confine itself largely to the extraction of the cocaine, and do it thoroughly. That is something, as I say, I cannot go into because I have not looked up that particular phase of the subject. All I do know is that toluene does remove the cocaine from the coca leaf, but whether that is the best process of extracting cocaine from coca leaves and all the other alkaloids that are present, I cannot answer just now. I would have to look that up and investigate that further. Besides cocaine, toluene takes out of the coca leaf the other alkaloids, too. I don't believe it takes out many other principles. It may take out some of the oils, probably some traces of wax that are soluble in toluene. I imagine the coca wax might be slightly soluble in toluene. I am not familiar with "Pember-ton's French Wine Coca." I did not know that that was a preparation made from coca and cola nuts. I have no knowledge of that preparation at all. [735] One four-hundredths of a grain of caffeine is not an appreciable quantity of caffeine. I do not know that five-sixteenths of a grain of coca leaves would be much of a quantity. It probably could be analyzed and proved that there were traces there, but it would not be what I would consider an appreciable quantity.

Deposition of John F. Queeny, for Plaintiff.

JOHN F. QUEENY.

Direct Examination by Mr. HIRSCH.

I reside in St. Louis, Mo., where I have lived for 17 years, or more. Yes, sir, I came to Chicago voluntarily at your request to testify for the Coca-Cola Co. No, I do not expect any pay for my services. No, I do not expect my expenses to be paid. I am connected with the Monsanto Chemical Works, located in St. Louis. That concern has for some years passed been supplying the Coca-Cola Company with caffeine. The Coca-Cola Company is a big and good customer of ours and is a valued customer. I would travel from St. Louis to Chicago to give testimony in their behalf at any time that they might request it, and I am here as an evidence of that fact. I organized the Monsanto Chemical Works in 1901. Prior to that time I was buyer for the Meyer Bros. Drug Company, with which concern I was connected about 17 years. It is a wholesale drug concern. I was the buyer of their drugs, chemicals, and essential oils. Before I was with Meyer Bros. I was connected with Merck & Company of New York, another company also in the chemical business. Their chemicals were manufactured at that time in Germany, but they now have a factory at Rahway, New Jersey. I was with Merck & Company for two years. Prior to that time I was with Meyer Bros. again for two years. With Merck & Company I was the manager of their sales department, and right before that I was with Meyer

(Deposition of John F. Queeny.)

Bros. for two years. Prior to that time I was with I. L. Lyons & Company, New Orleans, wholesale druggists, in the capacity of buyer and druggist. Before that I was with Tolman & King, wholesale druggists, here in Chicago. I was there as a boy in 1872 and I was city buyer and had charge of their salesmen's department when I left there. Since 1872 down to the present time I have been connected with the drug and chemical business, with the exception of about six months, when I was with Devoe, Reybolds & Company, a paint concern here. [736]

Coca leaves are obtained from South America. It is a shrub. Cola nuts are obtained from Africa and grow on a tree. No, in my experience from the time I entered the drug business down to the present date there were no substances, or articles, on the market popularly known as coca or cola or coca leaves or cola nuts. I want to say right there that very often when coca was called for, cocoa or chocolate was very often sought. It is spelled "c-a-c-a-o," but oftener spelled "c-o-c-o-a." That is chocolate. I have known the product "Coca-Cola" over twenty years and have been familiar with it more or less during that time. In my travels I have found it advertised extensively, in my opinion. I had never heard of any other drink up to 1911 down there known as "Coca-Cola." No, I am not familiar with "Fletcher's Coca-Cola" and do not know that there is such a drink.

(There was no cross-examination of this witness.)

Deposition of John W. Rossiter, for Plaintiff.

JOHN W. ROSSITER.

Direct Examination by Mr. HIRSCH.

I reside at 722 North Lockwood Avenue, Chicago. I have lived in Chicago since 1877. At present I am not engaged in business but during all of my business life I was engaged in the drug business, with several concerns. Some wholesale drug houses, laterally with the house of Powers-Weightman, Rosengarter & Company of Philadelphia. Altogether I have been connected with the drug and chemical business about forty-two years. In all my experience as a drug man there have not been any substances or articles on the market that are popularly known separately under the name coca or cola, or coca leaves or cola nuts.

Cross-examination by Mr. LITTLETON.

For a great many years erythroxyton coca has been bought and sold on the market under the name of erythroxyton coca, or coca leaves. The United States Pharmacopoeia names this product coca, and it is known commercially as coca.

Redirect Examination by Mr. HIRSCH.

Yes, sir; that is used in making up drugs. It is known commercially,— that is, known in the drug and chemical trade. No, I should not say that it is not popularly known among the laity generally.
[737]

Recross-examination by Mr. LITTLETON.

No, I should not say that, as an article of value

(Deposition of John W. Rossiter.)

in medicine, it has been dealt in extensively in commerce in this country. There is an alkaloid, cocaine, derived from coca leaves, which is used quite extensively. No, I do not know that along in 1880 there were half a dozen big medicine houses making preparations with coca in them and selling them broad cast over the country. There was one remedy, a patent medicine that was sold quite extensively here for a while that was known, I think, as Wine of Coca. It had quite a sale here for a while. That, to my knowledge, was about the only preparation of coca that was sold very extensively. It was sold as a proprietary remedy. The alkaloid cocaine is the active principle of the coca leaves. Take that and the alkaloids out of the coca leaves and there is not much of the coca leaf left. The active principle of coca leaf is cocaine. In other words, you have taken the spirit out of the body.

**Deposition of Philip Jansen, for Plaintiff
(Continued).**

PHILIP JANSEN.

Direct Examination (Continued) by Mr. ROGERS.

I observed dispensing bottles in some of these places, some of which were marked "Coca-Cola" and when I asked for "coke" I was in some instances served out of a dispensing bottle so marked, and in some instances I was served out of a spigot in the fountain marked "Coca-Cola." I noticed a very great deal of advertising containing the words "Coca-Cola" around the stores and in the vicinity of the

(Deposition of Philip Jansen.)

stores where I called. The conspicuous feature of this advertising was the words "Coca-Cola." I did not observe any advertising of any product anywhere under the name "Koke" or "Dope." Starting on my trip at West Madison Street on July 8, 1913, I first went to the Madison Fruit Store. I went in and asked for "coke." It was pumped from under the counter like any other syrup, with no label upon it as far as I could see. I asked the proprietor if most people asked for "coke" when they wanted "Coca-Cola" and he said, "no," that most of them say "Coca-Cola." I then told him that some one told me over half the people asked for "coke" and I asked him how it was in his store. He said, no, that very few people say "coke" in there, that very nearly all of them ask for [738] "Coca-Cola." I was served by a young Italian who was the party I talked to. I next went to a small drug-store #122 Madison St., next to the Brevoort Hotel. Started conversation with the clerk while drinking a cherry squash. Asked about "Coca-Cola" as a hot weather drink and said, "I heard a fellow ask for it as coke." The clerk said, yes, about half of their customers ask for "coke" when they want "Coca-Cola." In reply to my question about the word "coke" he said, "it is just a nickname." During the conversation the clerk said he had sold about a barrel of "Coca-Cola" syrup every two or three weeks. While there, a young fellow selling drug supplies ordered a "Coca-Cola" asking for it by that name. The clerk drew the syrup from one of the

(Deposition of Philip Jansen.)

sections of the fountain as any other syrup. It was not labeled.

I next went to Buck and Raymer, 155 Madison St., stood drinking Orangeade for fifteen minutes, trying to start a conversation. Two clerks busy and not disposed to talk and I had no opportunity to talk of "Coca-Cola." While there, four people drunk "Coca-Cola." Heard one man ask for "Coca-Cola" but another man and two ladies were out of hearing when their order was given. The "Coca-Cola," was pumped from under the counter as any other syrup.

I next went to A. Arend Drug Company, 182 Madison St. Went in and ordered "Coca-Cola" from the boy at the fountain. It was pumped from under the counter. In speaking of the way people order "Coca-Cola" the boy said, "some ask for 'dope,' 'shot in the arm,' 'poison,' 'morphine,' " I asked if it was called "coke," and he said, "yes, some ask for it under that name, but more often as 'dope,' etc." He said he used to work at a place on La Salle St., where they sold from fifty to sixty gallons of "Coca-Cola" a week. I couldn't get him to say just how many asked for "coke" but he just said, "a great many ask for 'Coca-Cola' under that and the other numerous nicknames." While there, another man came in and asked for "Coca-Cola" under that name. It was served as mine. I next went to 228 Madison St., where a soda-fountain is operated in conjunction with Briggs Floral Co. Asked for "Coca-Cola" and was served by one of the young Greeks or Italians who run the

(Deposition of Philip Jansen.)

place. The syrup was pumped from under the counter and the spout was labeled "Coca-Cola."

[739] The Greek said they didn't sell much besides "Coca-Cola," but thought the public would learn to like "Vin Fiz" and "Cherry Squash." I asked about the two nicknames by which "Coca-Cola" is ordered and he was not as familiar with the word "coke" as he was with "sniff," "shot in the arm" and others. He said, however, that some do ask for "coke" when they want "Coca-Cola," but he thought that most of them said "Coca-Cola."

I then went to the Northwestern Confectionery, 304 Madison St. It was run by Greeks. I ordered a "Coca-Cola," which was pumped from under the counter. I asked if people asked for "coke" when they wanted "Coca-Cola" and the young Greek who served me said, yes. He did not care to converse, however, and I could get nothing out of him except that people do ask for "coke" as well as "dope" and other nicknames. I next went to a candy, fruit, and flower shop between numbers 354 and 358 Madison Street, which shop had no number. It was also run by Greeks. I went in and asked for "coke." The Greek who served me did not understand me, but when I repeated my order he said, "coke? Oh, yes, 'Coca-Cola.' " He drew the syrup from one of the sections of the fountain like any other syrup, and, although the spout was labeled, I could not read it. When he served me I asked if many people asked for "koke" when they wanted "Coca-Cola." He simply looked at me, and, when I repeated the ques-

(Deposition of Philip Jansen.)

tion, he only grinned. From this action I judged that he did not have much to do with the mixing of drinks at the fountain and so could not answer my questions, or else he was just indisposed and not desirous of carrying on a conversation with customers. I next went to a drug-store at 570 Madison, operated by George V. Haering. Went in and asked for a glass of "coke" and the clerk said he didn't have any. Took root beer and asked if there was no demand for "Coca-Cola." He said he had just taken the store and did not know. I asked if he had heard people ask for "coke" when they wanted "Coca-Cola" before and he said, "yes, many times." I asked if more people did not say "coke" than "Coca-Cola" and he said, yes, he thought so. When I asked for "coke" when I went in he said "Coca-Cola? No, we don't have it." I next went to the Drug-store of Frank P. Haesler, 922 Madison St. Went in and asked for a small glass of "coke" and the proprietor immediately said "Coca-Cola?" and pumped the syrup from under the counter. [740] Business called him and his assistant to the rear of the store and there was no opportunity to start a conversation. I next went to the store of Wm. Shotts, 1336 Madison St. Went in and asked for a little "coke." A young fellow, evidently a foreigner, served me "Coca-Cola" out of a bottle labeled "Coca-Cola" in red letters. He said they sold a good deal of "Coca-Cola" and showed me the gallon bottles which they used, one or two each week. I asked if many people asked for "coke" and he said, "quite

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a few," but he always knew what they wanted and gave them "Coca-Cola." He then said I should always ask for "Coca-Cola" as there was other stuff called "Koke" and "Cola." He said the advertisement said to ask for "Coca-Cola" as that is the only real article. He also said he served "Coca-Cola" when they asked for "coke," and "Cola" when they ask for "Cola," or use any of the other nicknames.

I next went to the Purity Drug Store, 1364 Madison St. Went in and ordered a "coke" and the clerk served "Coca-Cola" out of a bottle labeled "Coca-Cola" in red letters. He repeated "Coca-Cola" after I said "Coke," and so I asked if it wasn't called "coke," and he said, "yes." He was not disposed to talk and went to the back of the store.

I next went to an ice-cream parlor with no name or number in sight, which was between 1524 and 1526 Madison St. Went in and ordered "coke" and the boy, a foreigner, repeated "Coca-Cola?" and drew the syrup from a section of the fountain marked "Chocolate." There was a bottle labeled "Coca-Cola" in red letters standing on top of the fountain, but he did not use this. I asked him if many people didn't ask for "coke" when they wanted "Coca-Cola" and he said "yes." I asked him if about half of the people didn't ask for "coke" and he said he wasn't sure, but they always got "Coca-Cola" no matter how they asked for it. I asked again about the way people asked for "Coca-Cola" and he said he thought most of them asked for "Coca-Cola." He said he understood what they meant by "coke,"

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“dope,” and always gave them “Coca-Cola.”

I next went to the A. S. Bishop Drug Store, 1528 Madison St. Went in and asked for “Coca-Cola” and was served by a young assistant from a bottle without any label. As he served me I asked if people always asked for “Coca-Cola” or if they sometimes said “coke.” He said, “Oh, yes, many people say ‘Coke.’ ” He then went to the rear of the [741] store and there was no chance for further conversation. On July 9, 1913, I went to the store on the South Side of Madison St., 1537, where a sign said Cut Rate Drugs. Went in and ordered a “Coca-Cola” and was served by the proprietor, evidently, who pumped the syrup from underneath the counter. The spout was not labeled “Coca-Cola.” I had no opportunity to ask any questions.

I next went to a small candy shop advertising “Davis Chocolates,” at 1503 Madison St. Went in and asked for cherry phosphate. Was served by a girl. Saw a bottle labeled “Coca-Cola” in red letters standing on the counter and asked the girl if they sold very much of it and she said, “yes.” I asked if people ever asked for “coke” when they were ordering “Coca-Cola” and she said, “yes, many times.” I said that a fellow had bet me that at least half the people asked for “coke” and I didn’t think so as I hadn’t heard people order “Coca-Cola” under that name. She said, “yes, a great many say ‘coke’ for ‘Coca-Cola’ ” and that the first time she heard the word “coke” she didn’t know what it meant. She said, “coke is a rough way to order ‘Coca-Cola,’ but

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many people use the word."

I next went to a fruit store, 1457 Madison St. Went in and asked for a little "coke." The proprietor a foreigner, said "Coca-Cola?" and took the syrup from a bottle labeled in red letters, it stood on the counter. I asked if many people asked for "coke" when they wanted "Coca-Cola" and he said, "yes, a few." I said that "a fellow bet me that half the people asked for 'coke,' " and he said, "Oh, no," he thought most of them said "Coca-Cola." He then said that the people called it "Coca" in the old country. I asked again about the number of people who used the word "coke." He said there were many nicknames, but he thought about three-fourths of the people asked for "Coca-Cola" while the other fourth say "coke" or some other word.

I next went to the store of John S. Stiles, 1401 Madison St. Went in and bought a cigar from an elderly man, evidently the proprietor. A young clerk came out to the fountain to serve a lady and I asked him if many people ordered "Coca-Cola" under the name "coke." He said no, he didn't remember hearing the word "coke" used very much, though he was familiar with it. He said he had been at the store a year and [742] and didn't think more than two or three people had said "coke" in ordering "Coca-Cola." He said many people asked for "Coca-Cola" as morphine and names like that.

I next went to Thom's Place, 1307 Madison St. Went in and asked for a little "coke," but had to say

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"Coca-Cola" before the young Greek who served me could understand what I wanted. I asked if he had ever heard the word "coke" before and he said, "no," and grinned. He evidently did not understand English very well. I asked then if every one asked for "Coca-Cola" as "Coca-Cola" and he grinned and said, "yes."

I next went to James Peterson, Fruits and Candy Store, 1203 Madison St., and asked for a little "coke." A young foreigner served me and the "Coca-Cola" was put up in small bottles. "Coca-Cola" was stamped on the bottle. I asked if many people asked for "coke" when they wanted "Coca-Cola" and he said "yes, quite a few." I told him that a fellow bet me that about half the people asked for "Coca-Cola" under the name of "coke" and the only response was a shake of the head, which might have meant anything. He was not disposed to talk further.

I next went to the store of W. H. Armbrrecht, 1065 Madison St., where I ordered a little "coke" and the young fellow immediately pumped "Coca-Cola" syrup from beneath the counter. The spout was labeled "Coca-Cola." I asked him if most people asked for "coke" in ordering "Coca-Cola," telling him of my bet. He said most people called "Coca-Cola," "coke" or "dope," but he thought "dope" a more common expression than "coke."

I next went to Bauer's Pharmacy, 805 Madison St. and asked for a "Coca-Cola." A middle aged man served me, pouring the syrup from a bottle

(Deposition of Philip Jansen.)

labeled "Coca-Cola" in red letters. I stood around ten minutes before I had any chance to ask questions. I finally asked the man who served me if he found that most people called for "coke" in ordering "Coca-Cola." He said, "yes, a great many say 'coke.' " I told him of my bet and added that that sounded big and so I thought my bet a good one. He said, "yes, a great many people use the word 'coke' " but he thought fifty per cent was putting it high.

I next went to the store of G. F. Wisshack & Company, 733 Madison Street and asked for a little "coke." The young fellow who served me didn't seem to understand what I wanted, but when I repeated [743] my order he drew some "Coca-Cola" syrup from a section of the fountain labeled "Coca-Cola." I asked if he hadn't heard the word "coke" before and he said "Oh, yes, but I didn't hear what you said the first time." I then asked him if many people ordered "Coca-Cola" under the name "coke" and he said, "quite a few." He added that most of the people whom he had served seemed to ask for "a shot in the arm" and he thought that the word "coke" was used by comparatively few.

I next went to Eli Lipschits Pharmacy, 517 Madison St., and asked for a glass of "coke." A young fellow, a foreigner, served me pouring the syrup from a bottle labeled "Coca-Cola." I asked him if many people ordered "Coca-Cola" under the name "coke" and he said, "yes, quite a few." He then turned to one of the other young fellows who was

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working near at hand and asked him if he ever asked for "Coca-Cola" under the name of "coke" and his friend said, "yes," he always used the word "coke." They both agreed that the word "coke" was used by a great many people, but probably not by half of them.

I next went to the Northwestern Fruit House, 509 Madison St., and bought a cigar. Asked the young foreigner, who waited on me, if they sold much "Coca-Cola." He said, "yes, quite a bit." I then asked if some people asked for it under the name of "coke," and he said, "yes a great many of the young fellows always say 'coke.'" I then said a man had bet me that fifty per cent of the people asked for "coke" when ordering "Coca-Cola," and he said, "no, probably not that many, but at least twenty per cent use the word." He repeated his statement about so many of the younger fellows asking for "coke" and said the older people say "Coca-Cola."

I next went to the Security Confectionery Co., 191 Madison St., where I ordered a small glass of "coke." The waiter repeated "Coca-Cola" and pumped the syrup from beneath the counter from a spout which was not labeled. Three waiters were kept busy by the rush of customers, and, though I stood at the fountain for fifteen minutes, there was no chance to ask any questions. While there, two men and one lady ordered "Coca-Cola" and the syrup was drawn as mine had been.

I next went to the Buck and Rayner, corner State and Madison Streets, and ordered chocolate milk.

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[744] There were many customers and I had no opportunity to ask questions and was finally crowded away from the fountain. Went out on the street for a moment and then returned finding one of the clerks to whom I put my question. I told him I had a bet with a man concerning the way people ordered "Coca-Cola." I asked him if many people asked for "Coca-Cola" under the name of "koke" and he said, "yes, a great many." I said the bet was that fifty per cent of the people asked for "coke" instead of "Coca-Cola" and he said probably more than fifty per cent use the word "coke." He said that in his home town no one said anything but "give me a 'coke'" when they wanted "Coca-Cola." He added that a great many called for "a shot" or "dope" when they wanted "Coca-Cola" and later qualified his statement concerning the number of people who said "coke" by saying that over fifty per cent of the customers called for "Coca-Cola" under the name of "dope," a "shot" or "coke."

On July 10, 1915, I visited the stores on the North side of Madison St., West of Ogden Avenue. I went to 1606 and ordered a chocolate soda from the proprietor. This was a small shop and there were no "Coca-Cola" signs in sight, and I asked the man if he sold "Coca-Cola." He said, no, he didn't have it, but expected to put it in by the end of the week. I asked if there wasn't any demand for "Coca-Cola" and he said, Oh, yes, many of his customers asked for it. I then asked if any of his customers asked for "Coca-Cola" under the name of "coke" and he

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said "yes, and in some places they use the word 'coke' entirely." He said in his home town in Southern Illinois they say "coke" always, when they speak of "Coca-Cola." He also said his brother, who ran a drug-store, often wrote him about his big sale of "coke." I next went to 1662 and bought a cigar. Was waited on by one of the Greeks, who evidently ran the place. I asked him if people ever came in and asked for "coke" when they wanted "Coca-Cola" and he said, no, and shook his head. I then said, a fellow was trying to tell me that most of the people said "coke" instead of "Coca-Cola" and he grinned and said, no. I said I thought nearly every one said "Coca-Cola" and he said, yes.

The next store I went into I asked a young foreigner at the fountain if I could ask him a question about the way people ordered "Coca-Cola." He looked at me as though he didn't understand. [745] I told him of my bet and asked if people used the word "coke" in his place. He looked at me very carefully and asked if I was from the "Coca-Cola" or the "Koke" people, and I said, no. I was simply trying to decide the bet. I repeated the bet and said I didn't think many people said "coke" and he said, no, they didn't. I said I thought most of them said "Coca-Cola" and he said, "yes." He seemed suspicious of me and did not care to talk.

At 1860 I went in and asked for a raspberry soda. I asked a clerk at the soda-fountain if they sold "Coca-Cola," saying that I didn't find the usual advertisements around the store. He said they did.

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I asked if people ordered it under very many nicknames, such as "dope" and "coke" and he said, yes. He was not inclined to talk and merely smiled when I tried to keep up a conversation. I had no chance to ask how many said "coke" when ordering "Coca-Cola."

I next went to Loren M. Haegler's store, corner Madison and Robey Sts., and asked for a little "coke" and the clerk said, "Coca-Cola?" and poured the syrup from a bottle labeled "Coca-Cola" in white letters. I asked if many people asked for "Coca-Cola" under this name "coke" and he said, "yes a few, but not a great many." At 2000, I went in and asked for some "coke." The young foreigner who served me could hardly speak English and I had to repeat my order. He finally said "Coca-Cola?" and poured the syrup from a bottle labeled "Coca-Cola" in red letters. I asked if he had ever heard people say "coke" before and he grinned and grunted in such a way that I couldn't tell whether or not he answered in the affirmative. When I asked again if some people didn't say "coke" for "Coca-Cola," he simply grinned at another boy standing next to him. I could not get him to speak.

I next went to the store of J. Barry, 2316, and asked for some coke." The woman who served me asked "Coca-Cola"? and then poured the syrup from a bottle labeled "Coca-Cola" in red letters. Crossing to the south side of Madison St., I went to John Myers Drug Store, 2350, and bought a cigar. A woman waited on me. She handed me a small paper

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of matches labeled "Coca-Cola." Looking at same, I said, "this company certainly does a lot of advertising," and she said, "Yes, they are always sending us things." [746] I asked if people ever ordered "Coca-Cola" under the name "coke" and she said, "What?" I repeated the question and she said she had never heard the word. I said a fellow told me that most people asked for "coke" when ordering "Coca-Cola" and she said it was a new word to her and she wouldn't have known what I wanted if I had asked for "coke." She said the word might be used in the little shops used by Greeks, for they shorten many words in our language.

On July 11, 1913, continuing on the south side of Madison St., I went to Davidson's Chocolate Candy Store and asked for "Vin Fiz." I asked a young clerk by whom I was served, if "Vin Fiz" was not cutting in on the "Coca-Cola" people's business and he said, "Yes, quite a bit." He said they are doing a lot of advertising and I said I thought they would have to go some to do more than the "Coca-Cola" people. I asked if many people said "coke" in ordering "Coca-Cola" and he said, "Oh, yes, lots of them, and many others say "shot in the wrist" or "dope." He did not say how many asked for "coke" but said many people came in from the theater next door and say, "Give me a little 'coke'."

I next went to the M. C. Smucker Drug Store, 2259, ordered "Vin Fiz" from a young clerk. I asked him if "Vin Fiz" cut in on the "Coca-Cola" business and he said, "Not at all." He said they

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only sold about one glass of "Coca-Cola" an evening, although he heard they sold a great deal of it on the south side. I asked about the way people ordered "Coca-Cola" and he said most all their customers call for "slow dope." Very few called it "coke," he said. I said I thought some of the nicknames, such as "coke" and "dope," may be harmful to the business, and he said, "No," he did not think so. He spoke of what "Coca-Cola" is, and he said it is merely an extract.

I next went to Tomasek's, 2201, and ordered plain ice cream from a middle aged man. I asked him if people ever ordered "Coca-Cola" under the name "coke" and he said he didn't remember of hearing people use the word "coke." I told him that a fellow bet me that half the people asked for "coke" and he said, "Oh, no." He said he thought about every one asked for a little "Coca-Cola." He said many people had tried to sell him other syrups similar to "Coca-Cola," but he didn't want to get in trouble for the sake of saving a few cents. [747]

I next went to the Slaytor Drug Company, 2159 Madison St. and bought a cigar from the young clerk. I asked him if many people asked for "coke" in ordering "Coca-Cola" and he said, "No, he didn't know the word." I told him of my bet and he said he hadn't heard the word used. He said people always asked him for "Coca-Cola." When I spoke of the numerous nicknames, such as "dope," "coke" and "morphine."

I next went to the drug store at 2059 Madison

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Street and asked the clerk for a little "coke." I had to repeat my order and finally had to say "Coca-Cola" before he understood me. I asked if people did not say "coke" when ordering "Coca-Cola" and he said, "No, he hadn't heard the word before." He said a man came in and said they couldn't sell "Coca-Cola" in some places in the south. His syrup was pumped from beneath the counter and the spout was labeled "Coca-Cola."

I next went to Bell's Candies, 1617 and 1619 Madison Street and asked for a little "coke." I had to repeat my order and then the waiter turned and said, "Double C," to the man behind the counter. I had to sit at a table and when the man who took my order went to fill it, I could not tell where the syrup came from, but it was beneath the counter somewhere. On my way out I looked over the counter and everything seemed to be in bottles.

On July 17, 1913, I took up the west side of Cottage Grove Avenue, south of 22d St. I first went to the Richard's Drug Store, between 2258 and 2302 Cottage Grove Avenue, and asked for a little "coke" and was served by a colored man who pumped the syrup from a nickle tank which stood on the fountain. The tank was not labeled. I asked if many people asked for "coke" and he said, "Yes, twice as many ask for that as anything else." Thinking he thought I was asking about the number who drink "Coca-Cola," I asked if people didn't ask for "Coca-Cola" under many nicknames, such as "coke" and "dope." He didn't pay much attention to me,

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but kind of nodded his head, grunted and then walked away. There was no chance for further questions.
[748]

I next went to Mitchell's Drug Store, 2209 Cottage Grove Avenue, and said, "I guess I will have a little 'coke,'" and a middle-aged man, evidently the owner, served me, pouring the syrup from a bottle labeled "Coca-Cola" in red letters. I asked if many people called for "coke" in ordering "Coca-Cola" and he said, "Oh, yes." I said I guessed they called it all kinds of names and he said, "Yes." I next went to 2904 Cottage Grove Avenue and asked the foreigner for a little "coke." He did not understand me, and, after repeating my order, I had to say "Coca-Cola." He served me bottled "Coca-Cola." I asked him if people didn't ask him for "coke" when they wanted "Coca-Cola" and he said, "No, they say 'Coca-Cola.'" He said in the winter some people ask for coca when they want hot cocoa, but they all say "Coca-Cola" when they want that.

At 2916 Cottage Grove Avenue, I asked the woman for some "coke." She said, "What?" and I said, "Coca-Cola." She gave me bottled "Coca-Cola," which was labeled. I asked if people didn't say "coke" when ordering "Coca-Cola" and she said, "Quite a few."

At Grove Pharmacy, 3100 Cottage Grove Avenue, I asked for a little "coke." A clerk served me and pumped the syrup from beneath the counter. I asked if many people ordered "Coca-Cola" under the name "coke" and he said, "Yes, he thought most

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of them said 'coke.' " He said, "That is a shorter word and 'Coca-Cola' is too much to say."

At the drug-store, 3300 Cottage Grove Avenue, I went in and asked for a little "coke" and was served by a middle-aged man, who poured the syrup from a bottle labeled "Coca-Cola" in red letters. When asked if he found that many people asked for "coke" in ordering "Coca-Cola" he said, "Oh, a few." He added that quite a few asked for "dope" but he didn't think very many said "coke." He said some people used to think "Coca-Cola" had cocaine in it until the Government analysis proved that it didn't. He said, also, that there was nothing like that in it for if there was he would be a dope fiend as he drank lots of it. He said he could quit it any time, and if there was cocaine in it he wouldn't be able to stop drinking it. [749]

At 3640 Cottage Grove Avenue I asked a young clerk for some "coke." I had to repeat the order and then said "Coca-Cola." When asked if people didn't say "coke" when ordering "Coca-Cola" he smiled and said, "Oh, a few say 'coke.' " He poured the syrup from a bottle labeled "Coca-Cola" in red letters. At 3900 Cottage Grove Avenue, I asked the girl behind the counter for some "coke" and she poured "Coca-Cola" from a bottle which evidently had been labeled but the label was washed off. When I asked for "coke" she said "Coca-Cola?" I asked if many people said "coke" when they wanted "Coca-Cola" and she said, "Yes, quite a few." She

(Deposition of Philip Jansen.)

said, "One man comes in each day and calls it his coffee."

On July 18, 1913, I took up the west side of Cottage Grove Avenue, going first to 2906, where I said, "Give me a little 'coke.'" Was served by a foreigner who took the syrup from a bottle labeled "Coca-Cola" in red letters, which stood upon the fountain. He repeated "Coca?" after I said "coke." I asked if people said "coke" in ordering "Coca-Cola" and he said, "Yes." I asked if very many said "coke" and he said, "Oh, quite a few, but in the south every one says 'coke.'" He said he didn't think he ever heard any one say "Coca-Cola" in the south. He then spoke of the law suit about "Coca-Cola" containing cocaine.

I next went to the Oakland Candy Shop, corner Drexel Blvd. and Cottage Grove Avenue, and asked for some "coke." The woman said "Coca-Cola?" as she reached for the syrup that was in a bottle labeled "Coca-Cola" in red letters. I asked if many people said "coke" when ordering "Coca-Cola" and she said, "Yes, quite a few." She seemed very familiar with the word.

At 3984 Cottage Grove Avenue, I asked for some "coke" and the man repeated "Coca-Cola?" and took the syrup from a bottle labeled "Coca-Cola" that stood on the fountain. I asked if he didn't hear the word "coke" very often and he said, "No." I said "Then you don't think may people order 'Coca-Cola' under the name of 'coke,'" and he said, "No, that he very rarely heard the word."

(Deposition of Philip Jansen.)

At Walgreen and Thorson's, 4134, I asked for some "coke." The boy smiled and said "shot in the arm?" He poured the syrup from a bottle labeled "Coca-Cola" in red letters. I asked if many people asked for "coke" in ordering "Coca-Cola" and he said, "Yes, quite a few." [750] I told him that a fellow wanted to bet me fifty per cent of the people said "coke" and he said, "Oh, not that many, you ought to take the bet." He said, "Fellows unknown to me come in and ask for 'Coca-Cola,' saying 'Give me a shot in the arm.' " He said that more people say "dope" and "shot in the arm" than "coke." He said that Walgreen and Thorson, who have five stores on the south drive, have a contract selling for about 14 gallons of "Coca-Cola" syrup a week, so that shows it is a good seller on the south side. While I was there a man came in and asked for a "Coca-Cola" using the full name, and the clerk winked at me as he filled the order.

At 3269, I asked him for some "coke." The clerk poured the syrup from a bottle labeled "Coca-Cola" in browish red letters. I asked if many people called it "coke" and he said "Yes, quite a few come in and say, 'Give me a "coke" or "dope." ' " He was very familiar with the word.

At 2839 I asked for some "coke." A young clerk pumped the syrup from beneath the fountain from a spout which was not labeled. I asked if many people called "Coca-Cola" "coke" and he said, "Yes, indeed." He said about three-fourths of the people say "coke."

(Deposition of Philip Jansen.)

On July 19, 1913, I continued on the west side of Cottage Grove Avenue. At 4210 I asked for a little "coke." I had to repeat the order and then the man said, "Coca-Cola?" and took the syrup from a bottle labeled "Coca-Cola" in red letters. As he mixed my drink I asked if people around there called that "coke" and he said "'Coke' or 'Coca-Cola,' it's all the same."

At 4256 I bought some Fatimas and then asked for some "coke." The man said "Coca-Cola?" and drew the syrup from a china fountain labeled "Coca-Cola" in red letters, which stood upon the counter. I asked him if people around there called "Coca-Cola" "coke," and he said, "Oh, yes, about all of them say 'coke.'"

At 4340, I asked the woman for some "Coca-Cola." She took the syrup from a bottle beneath the counter, but I couldn't see whether or not it was labeled. I asked if she had heard people call "Coca-Cola" "coke" and she said, "No, she never heard any one call it anything but 'Coca-Cola.'" [751]

I next went to 4300 Cottage Grove Avenue and asked for some "coke." The boy said "Coca-Cola?" and drew the syrup from a china "Coca-Cola" fountain, which stood on the counter. I asked him if he heard the word "coke" very much and he said, "No, people always asked for 'Coca-Cola.'"

I next went to #4458 Cottage Grove Avenue and asked for a little "coke," and, as the clerk took "Coca-Cola" syrup from a bottle labeled "Coca-Cola" in red letters, he said, "Will you have it in a

(Deposition of Philip Jansen.)

glass or in the arm.” I said I guessed I would have it in a glass, and asked if many people called it “coke.” He said, “Oh, yes, a great many,” and then went to the back of the store.

I next went to the store at the corner of Cottage Grove Avenue and 47th Street and asked for some “coke.” The foreigner said “Coca?” and took the “Coca-Cola” syrup from a bottle labeled “Coca-Cola” in red letters. I asked if many people said “coke” for “Coca-Cola” and he didn’t seem to understand. I asked if people called for “coke” instead of saying “Coca-Cola.” He said, “Many say that, it is easier than saying ‘Coca-Cola.’” To him “coke” seemed to be pronounced “coco.”

At 4700 Cottage Grove Avenue, I asked for a little “coke.” The boy, a foreigner, said “Coco?” and pumped the syrup from a small metal fountain that stood on the counter.

At #4858, I asked for a little “coke.” The woman behind the counter said “Coca-Cola?” and took the syrup from a bottle beneath the counter. She did not lift the bottle high enough to enable me to see whether or not it was labeled. I asked her if people ever say “coke” and she said, “Oh, some times,” in a way that would indicate that she did not hear the word very much. She added that she sold a great deal of “Coca-Cola” and “Vin Fiz.”

At 5012, I asked for a glass of “coke.” The girl said “What?” and I repeated “coke.” She said “Coca-Cola?” and I asked if people ever called that “coke.” She answered, “Well, some do, yes.” She

(Deposition of Philip Jansen.)

drew the syrup from a section of the fountain marked "Coca-Cola."

At 5034, I asked for a glass of "coke." The man said, "Coca-Cola?" and, after serving me from a bottle labeled "Coca-Cola" in red letters, went to the back of the store. [752]

At the Southeast corner of Cottage Grove Avenue and 4700 St. I went in and asked for a glass of "coke" and the young man said "Coca-Cola?" and pumped the syrup from beneath the counter. The spout was labeled "Coca-Cola." I asked if they called that "coke" very much around here. He said, "yes, that's about all they call it now."

At the Southeast corner of Cottage Grove Avenue and 43d St. I asked for a glass of "coke." The young clerk said "Coca-Cola?" and poured the syrup from a bottle labeled "Coca-Cola" in red letters. I asked if people used "coke" very much and he said, "oh, yes, we sell a lot of it, we buy it by the barrel. I drink a lot of it myself." I asked if people call it "coke" when they order it and he said, "oh yes, and we get calls for 'shot in the arm' from a lot of them."

On July 21, 1913, I took up the East side of North Clark St. At 151, I asked for some "coke." The clerk took the "Coca-Cola" syrup from a section of the fountain marked "Coca-ola." I asked if people around here called "Coca-Cola" "coke." He said, "oh, yes, they do everywhere." He said they say "coke" more in the South than they do here. He added that they sell an awful lot of it in the South

(Deposition of Philip Jansen.)

and in some of the office buildings boys are employed to bring trade.

At #163, I asked for a little "coke." The foreigner who served me took the syrup from a bottle labeled "Coca-Cola" in red letters. I asked him if many people called it "coke." I had a hard time making him understand what I meant but he finally said, "oh, a few." He said more people called it "coke" in the South where one store sells as much as ten in Chicago.

At #193, I asked for a little "coke." The clerk repeated, "Coca-Cola?" I asked if many people said "coke" and he said, "oh yes," and then went to the rear of the store.

At the Northeast corner of Lake and Clark Streets I asked for some "coke." The foreigner said "Coca-Cola?" and pumped the syrup from a small tank labeled "Coca-Cola." I asked if people called it "coke" and he said, "what do you mean?" I said, "do people say 'coke' when they order 'Coca-Cola?'" and he said, "oh yes, some do." He was familiar with the word after he understood what I was driving at.

At #421, I asked for some "coke." The man drew the "Coca-Cola" [753] syrup from a china fountain marked "Coca-Cola" standing on the counter. I asked if many people called it "coke." He looked up and said, "yes," rather abruptly and left me.

At #529 I asked for some "coke." The boy, a foreigner, said, "Coca-Cola?" and pumped the syrup

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from a metal fountain standing on the counter.

At #637, I asked for a little "coke." The boy drew the "Coca-Cola" syrup from a section of the fountain not labeled "Coca-Cola." I asked if many people call it "coke" and he said, "yes, lots of them." He added, "that is all they go by, 'coke.' "

At #803, I asked for some "coke." The man, a foreigner, said, "Coca-Cola?" and drew the syrup from a section of the fountain marked "Coca-Cola." I said, "don't people out here call that 'coke'?" He said, "yes" and grinned. I said, "I guess a great many people call it 'coke' everywhere," and again he just said, "yes."

At #849, I asked for a little "coke" and a small boy served me, pouring "Coca-Cola" syrup from a bottle labeled "Coca-Cola" in red letters. I asked him if people called "Coca-Cola" "coke." He smiled and said they called it everything.

At #861, I asked for some "coke." The boy, a foreigner, poured "Coca-Cola" syrup from a bottle labeled "Coca-Cola" in red letters. I asked if people around here called "Coca-Cola" "coke" and he said, "sure."

At #1039, I asked for some "coke." The man pumped the syrup from beneath the fountain. It was not labeled. I said, "I suppose people call that 'coke' around here" and he said, "no, 'Coca-Cola.' " He later added that some do ask for "coca."

At the Northeast corner of Clark and Division Streets I asked for some "coke." A boy pumped the syrup from beneath the counter. I asked if

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people called "Coca-Cola" "coke" and he said, "no, they call it 'Coca-Cola.' " An older clerk who stood next to the boy heard my question, smiled and seemed on the point of saying, "yes," when the boy answered, "no."

At #1310, I asked for some "coke." A young clerk poured the syrup from a bottle labeled "Coca-Cola" in red letters. [754] I said, "I suppose a lot of people call that 'coke.' " He said, "yes, 'coke' and 'dope.' " He added "South of Kentucky they all call it 'dope.' "

On July 22, 1913, I continued on the East side of North Clark Street. At 1405 I asked for a little "coke." The boy said "Coca-Cola?" and pumped the syrup from beneath the counter. The spout was labeled "Coca-Cola." I asked if many people call it "coke." He said, "no, they say 'shot in the arm' around here." He added that in the South they all say, "give me a glass of 'dope.' "

At #1561, I asked for some "coke." The clerk did not hesitate to pour syrup from a container marked "Coca-Cola." I asked if people call it "coke" *very* and he said, "yes, many say 'coke' and 'dope.' "

At #1956, on the West side of North Clark Street, I asked for a little "coke." The boy, a foreigner, said, "what?" and I repeated, "coke." He asked "Coca-Cola?" and took the syrup from a china fountain marked "Coca-Cola," which stood on the counter. I asked if people called it "coke." Thinking I had asked the name of the stuff, he said, "Coca-

(Deposition of Philip Jansen.)

Cola.” I said, “I know, but do people call it ‘coke’ around here?” He kind of shook his head. I turned to another boy who was behind the counter and said, “don’t they ever call it ‘coke’?” He smiled and said, “yes, it’s short.”

At #1166, I asked for some “coke.” The man, a foreigner, didn’t *understood* me, but finally said “Coca-Cola?” and took the syrup from a bottle labeled “Coca-Cola” in red letters. I said, “don’t they ever call that ‘coke’ around here?” He puckered up his lips and said, “naw.”

At #1000, I asked for some “coke.” The man said, “Coca-Cola?” and took the syrup from a bottle labeled “Coca-Cola” in red letters. I asked if many people called this “coke,” or if most of them say “Coca-Cola.” He said, “I guess most of them say ‘Coca-Cola,’ but some say ‘coke.’” I told him a man had bet me that half the people said “coke” and that I thought that was too many, although I knew some called it “coke.” He said, “no.” He said, “I guess they call it lots of names.” He later added that some one ought to make a syrup like “Coca-Cola” and call it “coke.” [755]

At #920, I asked for some “coke.” The man said “what?” and then said “Coca-Cola?” and took the syrup from a bottle labeled in red letters. I asked if people ever called that “coke” here and he said, “oh yes.” I asked how many say “coke,” and received no answer.

At #800, I asked for some “coke.” A young

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clerk served me from a bottle labeled "Coca-Cola" in red letters.

At #732, I asked for some "coke." The man, a foreigner, said "Coca-Cola?" and took the syrup from a bottle labeled "Coca-Cola" in red letters.

At #660, I asked for some "coke." An elderly man served me, taking "Coca-Cola" from a bottle labeled "Coca-Cola" in red letters. He repeated "Coca-Cola?" after I asked for "coke." I asked if many people called that "coke" around here. He said, "oh, yes, some do," and then disappeared in the rear of the store.

At #65 Monroe Street, I asked for some "coke." After drinking it I asked one of the clerks, a big good-looking Irishman, if many people called "Coca-Cola" "coke." He said, "yes, a great many." I told him that a man had bet me that fifty per cent of the people say "coke." He said, "yes, easily that many." He added that nine out of ten say "coke," or used to. He said there was a syrup like "Coca-Cola," called "coke," so when people asked for "coke" they got "coke" so now some of them say "Coca-Cola." The fact that there was such a syrup as "coke" broke some of the people of the habit of calling "Coca-Cola" "coke."

Cross-examination by Mr. LITTLETON.

Yes, sir; in one of the places where I went on my rounds, I asked the proprietor, or the man there, for "coke" and he asked me if I would have it in a glass or in the arm. It is also true that, although some of these stores were just a few doors from the others,

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the dispenser or proprietor in one of them had heard the word "coke" used somewhat and the other fellow never had heard of it and did not know what it meant at all. No, sir, I do not know "Coca-Cola" when I get it. I do not know whether the drinks they served me were "Coca-Cola" or not. I do not know the taste of "Coca-Cola." I have drank it, but could not identify it. [756] I do not know of so many things that taste like that, but I cannot guarantee that it is "Coca-Cola." You ask why I say that, and, if I do not know anything that tastes like it, why it is that I cannot tell it when I taste it; I accept it as "Coca-Cola" when I take it. I know the taste of what they call "Coca-Cola." The bottles are labeled "Coca-Cola" from which they serve when you ask for "Coca-Cola." I do not know from the taste that what I got up here in every instance was "Coca-Cola." Those people I went to see were people who dealt in "Coca-Cola" and handled "Coca-Cola." They did not handle any other drink that I know of that was similar to "Coca-Cola." In many places the expression "give me a shot in the arm" or "give me a shot in the wrist" or "give me a shot" seems to be very prevalent around Chicago. I don't remember of so many people stating that it had cocaine in it. You ask if there is not a considerable number of people who think it has cocaine in it; I don't know. I remember one dealer who said that his customers used to think that it had cocaine in it. At times they ask for it as "cocaine" and "morphine." I have heard of a cocaine fiend, but I don't

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think I have ever heard the expression "coke fiend" used with reference to a cocaine fiend.

I am 22 years old and made these rounds in July, 1915. After I had completed the whole investigation, I gave the information I got on these rounds to Mr. Rogers, and all this information was in his possession at the time this suit was brought in this case. I was a student at Michigan University until this June. I graduated this year. I was taking the classical course. You ask how I happened to make these rounds, anyway, and what interest I had in it; I was simply out of work and Mr. Rogers offered it to me as some work in the summer. It took me less than a week to make these rounds. (Defendants object to this character of testimony as to the nicknames because not warranted by the pleadings, and to the hearsay portions thereof because purely hearsay, and to the impressions and assumptions of the witness because incompetent. Objection overruled. Exception.)

STIPULATION.

The following stipulation was agreed to and signed by counsel for plaintiff and defendant: [757]

It is not necessary for the plaintiff to further connect up the three samples referred to in the testimony of Dr. Charles E. Caspari, it being agreed that the samples examined by Dr. Caspari were samples of the product manufactured by the defendants herein, and it is further agreed that it is not necessary to produce as witnesses those people who purchased the samples, it being agreed that they would have

testified that they purchased direct from one of the Koke Companies, except in the case of the sample obtained direct from J. H. Van Deusen, and counsel for defendants hereby withdraw their objection to that portion of the testimony of Dr. Caspari as to the method by which he obtained the samples.

(This was all the testimony in chief taken and introduced by the plaintiff on the trial of this cause.)
[758]

Deposition of Henry Boerger, for Defendants.

HENRY BOERGER.

Direct Examination.

Forty-six years of age; business for twenty-six years has been bottler of soft drinks. Working first for others and then for myself. I have been in business for myself for fifteen years and the place of business is located on Williams Street, Chattanooga, Tenn. I have lived in Chattanooga thirty-one years. During that time I have bottled a good many different flavors of lemon, strawberry, ginger-ale, and all the general line of soft drinks. I have bottled a number of cola drinks, Wine of Coca, Gayola, and Diehl's Star-Cola. I bottled Wine of Coca about eleven years ago. The color of Wine of Coca is a dark brown. It was the same color as Star-Cola, and the same as Coca-Cola. Gayola has the same color. The taste of these Cola drinks mentioned are all very near the same, similar in taste. When I first bottled Coca-Cola we used the Hutchinson stopper, that is a different-shaped bottle, but for the last ten

(Deposition of Henry Boeger.)

years we have been using the crown-stoppered bottle nearly altogether. The crown-stopper bottle we have been using is the same shaped bottle as other drinks are put up in, only other soft drinks are put up in a light glass bottle while the most of Coca-Cola is put up in amber bottles. That is the way they bottle it in Chattanooga. Cola drinks are sold in Chattanooga now, also Tru-Cola, and Koke, and Maud Miller. I bottled Koke. The Central Koke Company makes Koke. I get mine from Chattanooga. Defendants' Exhibit No. One is a bottle of Koke I bottled in Chattanooga. I have been putting up soft drinks of various kinds in bottles of that general size, appearance, for about nine or ten years, using the Hutcheson Stopper Bottle. I would not know a bottle of Coca-Cola if I saw it, by the color, shape or size. Although some bottles are a different size from the Coca-Cola bottle, I would not know a glass of Coca-Cola if I saw it, by its color, because there are other drinks of the same color besides, for instance, root beer and other cola drinks, sarsaparilla. There are lots of [762] other bottles that have the same shape as Coca-Cola. I would not know a glass of Coca-Cola by its taste, because there are other drinks that taste similar to it and I never drink very much of it. I have known of other drinks on the market, similar in color, taste and appearance to Coca-Cola, for about ten or eleven years. I have been bottling Koke for about eleven months, soon after the Central Koke Company started in Chattanooga.

Offer in evidence Defendants' Exhibit No. I.

(Deposition of Henry Boeger.)

Cross-examination.

I handled a product called Star-Cola three or four years ago, made by Diehl, of Nashville. I first heard of Gayola about three years ago made by The Gayola Company, of Memphis, Tennessee. Wine of Coca was made by a firm in Atlanta, I think, and I bottled that some nine or ten years ago. These drinks are generally known as Cola drinks. I have been bottling Koke about eleven months. I buy syrup from the Central Koke Company, in Chattanooga, and add carbonated water to it and bottle it. I get the syrup in a barrel colored red. Have been getting it in that form for eleven months. I did not get any before that. The first I knew of the drink under the name of Koke was about eleven months ago.

Redirect Examination.

The color of the barrels the Gayola Syrup came to me in was red. I think the color of the barrels the Star-Cola came to me in was red, I am not positive. The color of the syrup of Gayola is similar with Coca-Cola syrup. The color of Star-Cola syrup is the same color as Coca-Cola syrup. The Wine of Coca syrup is the same color as Coca-Cola syrup. I have never seen any syrup for a cola beverage that was not that same color. I have never seen a cola beverage on the market that was not substantially, the same color as Coca-Cola. I think there are hundreds of Cola beverages on the market. Besides those I have mentioned are Afri-Kola, and Ala-Kola.

(Deposition of Henry Boeger.)

Recross-examination. [763]

Afri-Kola has been on the market ten or eleven years. Ala-Kola about three or four years. These drinks are what I would describe as cola beverages.

Deposition of J. M. Wheeler, for Defendants.

J. M. WHEELER.

Direct Examination.

Fifty-one years old, my business near-beer business, and before that I was a heater by trade. I was with the Chattanooga Brewery about four years before I went into the business. I have been in the near-beer business since 1901, and I handle soft drinks at my establishment. I handle them in bottles. I handle four kinds of soda water, Coca-Cola, Maud Muller, Koke, Rye-Ola, and Tru-Cola. I do not know as I can tell any difference in the color of these beverages compared with the color of Coca-Cola, as they all appear to be the same thing. The size, shape and general appearance, etc., of the bottles that these other Cola beverages are put up in compared with the Coca-Cola bottle are very much the same thing. There is very little difference in the taste of these cola beverages compared with the taste of Coca-Cola. I have had customers come into my place and ask for a Dope, and when they do I give them some kind of Cola drink. I serve them the first thing that is handy when they ask for a Dope, any kind of Cola drink. I have served Rye-Ola and Tru-Cola when they have asked for a Dope. When customers ask for a Dope I take it for granted they want

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some kind of cola drink, they do not want any particular kind.

Mr. ROGERS.—We object to that as incompetent, the witness pretending to testify what other people think.

Objection overruled, and appeal prayed and granted.

I do not regard a request from a customer for a Dope as a specific request for Coca-Cola exclusively. When customers come in and ask for a Dope I take it for granted that any kind of Cola drink will suit them. If they call for Coca-Cola I will give it to them, and if they do not, then any other cola drink that is handy I hand to them. I have never had any of these cola drinks other than Coca-Cola [764], refused on the ground that it was not what they asked for when a customer asked for a Dope, and I served this other drink in response to that request. I am about my stand most all the time so I can hear the requests my customers make for drinks that way, the customers ask for these Cola drinks in just any kind of a name. What have you got, what kind of soft drink have you? Sometimes I will call over what I have for them and they will say, "Any of them will do," it does not make any difference to them. I serve near-beer to customers by nicknames, too. Some of the nicknames they ask for it by are, a glass of foam, slop, suds, and so on. I do not regard that as a specific request for some particular brand of near-beer. They just want something out of the keg. I regard those names as general nicknames and applicable to

(Deposition of J. M. Wheeler.)

that class of drink. Dope is pretty much the same way, they just want something of that *lind* of drink, they don't mean any one drink when they come in and call for a Dope. I would not know a bottle of Coca-Cola if I saw it and did not see the name of Coca-Cola on the side of the bottle. It is pretty much the same bottle as the other Cola drinks, the same shape, and if you don't see the lettering on it I do not suppose you could tell the difference. I would not know a glass of Coca-Cola by its color and I could not swear that I could tell it by its taste. Cola beverages are similar in taste, color and appearance. Maud Muller tastes a little like it. I have also handled Koke. I got it from the Chattanooga Bottling Works. The size, shape and general appearance of the Koke bottle used compare pretty much the same with those used generally in the trade for other cola beverages. The color of Koke is the same as the color of other cola beverages. I do not see any difference in the taste and it would take an experienced Coca-Cola drinker to tell the difference. I cannot tell it. I would not know a Coca-Cola barrel if I saw it unless there was lettering on it. I have known of these other cola beverages similar to Coca-Cola, in color, taste and appearance for four or five [765] years.

Cross-examination.

I have been handling Coca-Cola for eight or ten years. I commenced handling Rye-Ola shortly after Zimmerman put it out, and have been handling Tru-Cola a year or so. I started to use it when it first

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came out, also Maud Muller, it was about the same time, about a year ago. It is my understanding the Chattanooga Brewery, connected with the Beverage Extract Company, put out this Maud Muller. These drinks I have mentioned are served in bottles. When a man comes to my place of business and asks for a drink I pull the crown off and hand the drink to him. I pour it in the glass or set the glass and bottle up on the bar. I commenced handling Koke after this bottling works commenced putting it out, about eleven months ago. I had heard the term Koke prior to that time, prior to eleven months ago when they asked for a Dope or a Koke I gave them any kind of Cola drink we had. I have possibly been handling Coca-Cola, approximately eight years. If a man came in between eight and nine years ago and asked for a Dope or a Koke, if I did not have any other cola drink except Coca-Cola, I would give him that, because I did not have anything else to give him.

Deposition of E. W. Freeman, for Defendants.

E. W. FREEMAN.

Direct Examination.

Fifty-nine years old, resided in Chattanooga for forty years. I have been in the saloon business about thirteen years, and during that time handled and dispensed soft drinks as well as liquors and beers and things. During all this time in Chattanooga, I have handled cola drinks. Some of the drinks are Coca-Cola, Rye-Ola, Ala-Kola, Maud Muller, Sarsaparilla, soda. I do not quite remember whether I

(Deposition of E. W. Freeman.)

ever handled any Tru-Cola or not. I have been about the bar so I could hear the words customers used in asking for the different drinks they wanted. I am a bar-tender and have known of the cola drinks other than Coca-Cola, possibly eight years and perhaps longer. I have been handling other Cola drinks since I have been [766] in the saloon business, the greater portion of that time. I would not know a bottle of Coca-Cola by its size, shape and general appearance unless it had Coca-Cola blown in it, or something like that. I do not believe I could distinguish a glass of Coca-Cola from any other drinks, or dopes, whatever they call them, if you set three or four of them out in a glass on a table, I do not believe I could distinguish Coca-Cola from Koke or Maud Muller or anything like that. I never did drink but very little of any of these soft drinks and I do not know whether I could tell a glass of Coca-Cola by its taste from any of these other cola drinks, or not. I do not suppose I could. I am not familiar with the taste of it. I handle the product Koke. I do not know who makes it, I buy it from The Chattanooga Bottling Company. When customers come into my store and ask for a Dope I give them most any dark-colored bottled drink, Koke or that Ala-Kola, it used to come handy and I used to give a good deal of that, Maud Muller, I give all of these. I have *know* of the drink Ala-Kola for the past few years, and of Rye-Ola about the same time. I understand when a customer asks for a Dope that most anything you give him out of a dark bottle suits him just as well as

(Deposition of E. W. Freeman.)

if he had called for any particular name of a drink of that class, a cola drink, a drink of that same general taste, color, exhilarating effect, and so forth. I take Dope in general as a name for all of those colored drinks. If a man comes in and wants Coca-Cola, he will say, "Give me Coca-Cola." I have heard only Koke and Dope applied to these Cola drinks. I have heard of these names Koke and Dope, a fair estimate, of about eight years. I understand them to be a class of anything that suits their taste. I do not believe I would know a Coca-Cola barrel unless I seen a label on it, but I believe the color was red. I served beer at my establishment, and the names they ask for it by besides beer, are German courage, suds, and such as that, something like that. I do not regard requests for beer under those names as requests for any specific brand of beer. [767] I have handled a number of different kinds of beer, I do not see but very little difference in the color of the different kinds. It all tastes like beer to me. I also handled in my place of business sarsaparilla, or root beer, Hires Root Beer and sarsaparilla. I have known of those drinks for years. The color of root beer and sarsaparilla as compared with Coca-Cola, the sarsaparilla is darker and Hires Root Beer is lighter. I do not know whether I could tell a glass of sarsaparilla or a glass of Coca-Cola or a glass of Koke or a glass of Ala-Kola or anything, set them out there, I do not know—I do not believe I can pick them out just in a glass, they are colored so much alike. I have never seen a Cola beverage that was

(Deposition of E. W. Freeman.)

not the same general color of Coca-Cola. They generally taste about alike to me and put up in the same general style of bottle, color and all. Up to the time I quit business two or three days ago I was not handling Coca-Cola at all. Prior to that, I did, at the time I was working at the Patten—when I was working there before, they handled Coca-Cola there, but the last time they did not handle it.

Cross-examination.

At the Patten the last time, was where I was. It has been two weeks ago since I quit at the Patten Hotel or Patten Buffet, as we call the bar, owned by Luke Pogue. Mr. O'Grady is not interested in that bar. I think he is in the whiskey and soft drink business, do not know what brand of whiskey he handled.

Mr. LITTLETON.—We object to that as entirely incompetent. Mr. O'Grady is not a party to the suit, not a witness, and has nothing to do with the lawsuit.

Objection overruled and appeal prayed and granted.

The brand Old Wakeman is handled by him. Old Wakeman was handled at the Patten Hotel Bar when I first went to work there. Mr. O'Grady's concern is The Wakeman Distilling Company, I think. About the time I quit it was not handled at all, it was handled about the time Mr. Pogue got hold of it, but he quit handling it altogether, [768] I worked prior to that time at the Signal Mountain Inn. I worked before that at the Rosebud Saloon or Bar. The Signal Mountain Inn has a bar also. I

(Deposition of E. W. Freeman.)

worked at the Bar, at the Stag, at the old Gin-Fiz, for a Mr. A. Averett, at the Stag Hotel, the Couvier—I think those are the principal places. I have worked at the Patten Hotel Bar on two different occasions. The last time I worked there they were not handling Coca-Cola. They were selling it the first time, that has been three years ago. I am not positive about whether I ever handled Tru-Cola or not. Have known of this drink Coca-Cola approximately seven or eight years, maybe ten years. I have been in the saloon business thirteen years. I do not remember whether they were handling it then or not. I have known of this drink Ala-Kola four or five years. Rye-Ola about the same length of time; I think they came out about the same time. Maud Muller has not been out but a few years, I do not know how long. I sold Coca-Cola longer than any other, because that is the oldest, of that character. If a man came into my place of business and asked for a Koke I would give him almost anything, the first thing I got my hand on, if I was very busy. Sometimes I asked him if he wanted Coca-Cola. He would say, “Give me some Dope; I don’t care.” When the other drinks were on the market and a man came in and asked for a Dope and I was not handling anything but Coca-Cola I would have to give him Coca-Cola. These other drinks are served over the bar when they are called for, the cap or crown is pulled off and then you place the glass and bottle on the bar. I never handled Koke only the last time I was working at the Patten Hotel. I knew of it about two years ago, I

(Deposition of E. W. Freeman.)

had heard the name before, heard these names Koke and Dope before the other drinks came on the market.

Redirect Examination.

I have heard of and handled Root Beer and Sarsaparilla all the time I have heard of and handled Coca-Cola. They have been the same general color all the time I have known them. I knew of these two [769] drinks, Sarsaparilla and Root Beer before I heard of Coca-Cola. They were the same color at that time as now.

Recross-examination.

I might classify Sarsaparilla as Cola drinks, I do not know as I would Root Beer. If a man came in and asked for a Dope I would give him anything that come handy. I do not know as I ever gave beer in response to orders for Dope or Sarsaparilla. When I was handling these other drinks and a man asked for a Koke or a Dope I would just give him anything, but prior to that time I gave him Coca-Cola.

Deposition of R. F. Zimmerman, for Defendants.

R. F. ZIMMERMAN.

Direct Examination.

Thirty-six years old; lived in Chattanooga since 1891; engaged in bottling business and a general line of soft drinks; have been engaged in that business six years the 28th day of next June, in this county. I bottle cola drinks and the name of my concern is the Union Bottling Company. When I first went

(Deposition of R. F. Zimmerman.)

in business I bottled a cola drink that I made myself, practically five years ago; I just didn't have any special name; the wagonmen called it Dope, generally in selling it to the trade they would halloa "Give me a case of Dope." We didn't have any name on it, just put a plain crown and no label whatever, in a black bottle, and called it Dope. We would throw it out if they called for Koke; we gave the same thing, Koke or Dope, and if they called for Coca-Cola, we did not have it, but gave them something similar to that. It compared with the color of Coca-Cola in that it was colored with burnt sugar, practically the same color; I could not distinguish one from the other, and the tastes were very much alike; the ingredients were almost the same as the original Coca-Cola of to-day. We put it up in black bottles.

Q. I show you a bottle marked Defendant's Exhibit No. 2 and ask if that is the same style bottle you put up your drink in, and which you have referred to?

The only difference is the crown, we had a plain crown on it instead [770] of the Tru-Cola crown. The shape, size, and general appearance of that bottle compared with the other bottles used in bottling other soft drinks are absolutely the same with the exception of the color. The color of the bottles I bottled the other drinks in are a sort of green, have a little green shade in some of them. That was the bottle that had been used prior to the time I got into the soft-drink business. I bottled Tru-Cola. I do not know what is in Tru-Cola, I buy the syrup from

(Deposition of R. F. Zimmerman.)

the beverage company. There is a little difference in the after-taste from this other drink, but the trade has never noticed the difference. I have been bottling the drink in Exhibit No. 2 practically four years, also sarsaparilla and Root Beer. I used a different bottle, that is a patented bottle from the Hires Company for the Root Beer and sarsaparilla. I have known the drinks sarsaparilla and Root Beer since '91, twenty-five years ago or more. The color of root beer and sarsaparilla that I knew at that time compared with the color of this drink to-day is practically the same. They are all colored with burnt sugar coloring. The color of root beer is practically the same as that of Coca-Cola, or any cola beverage. Root beer looks about the same as sarsaparilla, but as a general thing sarsaparilla is a little bit darker. If Coca-Cola was in a bottle exactly like that I could not distinguish the difference. It is bottled in a bottle distinguished from any other bottle; there is only one bottle I have ever seen that looked like it. Coca-Cola has a different bottle to that, and it has Coca-Cola blown here, and it has a ring around the bottom here with the name of the bottling company around the bottom. I could not distinguished a glass of Coca-Cola by its color. Because there are plenty of drinks of the same color, so far as that goes; I could not say whether it was Coca-Cola or not, because it was colored that way. You can take water and color it with burnt sugar and you cannot tell it from Coca-Cola setting on the counter. As a general rule I could tell Coca-Cola

(Deposition of R. F. Zimmerman.)

from you might say ninety per cent of the drinks there is on the [771] market that I know of by its taste. I have known those other Cola drinks ever since I have been in business, since '91. When you come in contact with these cola drinks, so many, you cannot keep track of them. Drinks similar in taste, color and appearance to Coca-Cola that I know of on the market to-day are Lemon-Kola, this Ryeola, Roxie-Kola, Miola, Misti-Kola, Gayola, and then, Amori-Kola, of Americus, Georgia, and this other Mar-Cola, that is made in some place. I would have to sit down all day and think of them, it would be enough to mention all day long, and think of them. There is another one in town L'Aroma, that is a dope drink. I have known of them for six years anyhow, I have been connected with them. I have known of Cola drinks ever since I have been in Chattanooga, and practically before that, when I traveled for the brewery, I saw Cola drinks all over the country, scattered around, but I paid very little attention to them then, because I was selling beer. We get the syrup from the National Syrup Company, then we bottle it. It comes in a kind of reddish barrel, supposed to be red, I think. I have never seen a cola drink on the market that was not substantially the same color as Coca-Cola. They are all practically the same taste, unless a man, of course, that is in the business is making a study of it; he may probably distinguish the difference in it, but to the general public there is not one out of one hundred that if you put any cola out for him that would know whether it was Coca-Cola, or what it was.

(Deposition of R. F. Zimmerman.)

Cross-examination.

In 1891 I knew of Ryeola. I think that is one thing I would not like to swear to. As well as I can remember it was being bottled when I came here. I would not like to go back into 1891 because I did not pay any attention to the bottling business at that time. I cannot swear whether Coca-Cola was bottled here in 1891 or not. At the time I went into business six years ago I knew of Cola drinks. I won't swear that I knew of Cola drinks before that time; I did not [772] notice them except merely as a general passer-by along the street. I remember seeing Coca-Cola advertised prior to six years ago. All I would say I have seen has been the advertisements along the street. I was in the beer business prior to coming to Chattanooga. I lived in Cincinnati, Ohio. I was with the John Houck Beer Company. I have been with different concerns since coming to Chattanooga, was with the Chattanooga Brewing Company about five years. Some of the officials are Chas. Reif, Henry Brockhaus, Jr.; Mrs. Reif was the head of it when I came here, the old lady. She's dead. I do not know of anyone but Chas. Reif and Brockhaus. That would take me up to about 1896, after that Moerlein Brewing Company, after that I went to work for myself. I worked with the Moerlein Brewing Company from around Chattanooga up to the time I went into business for myself; prior to the time I went into the business I never gave the average cold drink any thought. I do not mean to testify to anything about

(Deposition of R. F. Zimmerman.)

what is called Cola drinks prior to six years ago. Have I seen big signs? No, I am not clear in my recollection about them; that is why I cannot testify about it positively. I have known Lemon-Cola not over a year. I have known of Ryeola ever since I went into the business, that was six years ago. The first time I saw Roxie-Cola was about three years ago, I guess. I have known Miola for probably three or four years. Misti-Cola about a year. Gayola about four years. Ameri-Cola probably six months or a year. Marcola hardly four or five months. Laroma I think it opened about September or October. I know a product sold around here by the name of Koke. I believe the first recollection I have of it was about the latter part of July, 1914. I saw an advertisement, the Southern Carbonator and Bottler, a monthly magazine published in Atlanta which goes to the bottling trade. About five years ago I put out a drink of my own and manufactured it under my own name. I did not advertise it any. We would go out to the negro stands as a general thing and they would call for a general mixture and we would just give them anything [773] on the wagon—if they asked for a lot of Dope that was the name it went by. I do not know if they used the name Koke at all. The first time I had my attention called to it was when they established a branch here. I may have heard that name before. The Central Koke Company established the branch here. There were some Chattanooga men interested in it. A few I knew were—Mike O'Grady

(Deposition of R. F. Zimmerman.)

and John Hiltz, and one of the Cummings boys, I think, was interested in it at one time, I am not positive. It don't seem to me as they used the word "koke" very much. Some coons are liable to give you any old name at all. I have heard the name Koke or Dope prior to the time I went into business. When I first came South was the first time I ever heard or knew of any Koke drink whatever in any way. Well, I have heard of them; when a man would say, "Give me a bottle of Koke or Dope," I guess I heard of them immediately after I came down here, I guess, because that was all I done, so far as I can recollect, and since I have been here I have heard those expressions. That was around 1891, from 1891 up to the present date.

Deposition of A. F. Ensinger, for Defendants.

A. F. ENSINGER.

Direct Examination.

Forty-seven years of age; at present live at Rossville, Georgia; that is near Chattanooga, Tennessee. I have lived there seven years now; before that I lived at 707 Bennett Avenue, Highland Park, Chattanooga, Tennessee. My business is bar-tender at the present time at the Eagles' Club; have been in that business about fourteen years. Prior to the time I was with the Eagles' Club, I worked at the Rose-Bud Saloon. I am about the bar so I can hear the names people use in asking for drinks they want. I dispense cola drinks. Some of the cola drinks I have dispensed are Coca-Cola, Koke, Ala-Cola, Tru-

(Deposition of A. F. Ensinger.)

Cola, Ozeola, Maud Muller; I do not know whether I can recall any others or not; there has been six or eight more I guess that during that time would come and go. I have known of other cola drinks on the market for fourteen years past. As compared with the color of Coca-Cola, they all look about the same. As compared with the taste of [774] Coca-Cola, I could not tell any difference. I dispense these drinks in bottles; the bottles of the different soft drinks I handle compare as to size, general appearance, etc., with the bottles in which Coca-Cola is put up, are all pretty much the same shaped bottle and color. Well, the cola drinks, the only bottles I have ever seen those in are those dark bottles, and the other soft drinks are a little lighter bottle. I would not know a bottle of Coca-Cola by its size, shape, color or general appearance unless I saw the name on it. The majority of bottles are all pretty much the same size, shape and color, and I could not distinguish them unless I had seen the name. I would not know a glass of Coca-Cola by its color. Those are all about the same color; I never could distinguish one from the other by the color of it, and they all taste pretty much alike; there is so little difference in it I could not distinguish them. I have calls at my place of business under the name of Dope. I generally give them a cola drink of that sort, whatever I have I give them. I do not know as they have made a specific request on me for Coca-Cola and nothing else. I never had any customers reject any cola drink served to him in response to a request

(Deposition of A. F. Ensinger.)

for a Dope other than Coca-Cola on the ground it was not what he asked for. I am still handling Coca-Cola. I regard Dope as a name for that class of drink and not as a specific name for Coca-Cola. I also dispense beer. There are numerous nick-names for it, such as suds, Dutch disturbance, and various other names. When a man comes in and asks for suds, or Dutch disturbance, I do not understand that he is asking for any specific brand of beer. I expect I have handled about all the different brands of beer there is in this market. With the exception of dark beers, the light beers, you cannot distinguish one from the other, hardly. It would be an easy proposition to serve a fellow with one brand of beer, if he asked for another one, if he were serving out of the keg. If a man is accustomed to drinking beer he may distinguish them. I would not know a Coca-Cola barrel if I saw it, unless it was labeled. [775] I used Coca-Cola barrels for about five or six years, and I did not see any difference in the barrel from that of any barrel, unless there was a label on it. I mean the entire make-up or anything of that sort. I could not tell any difference in the color; I have known other cola drinks similar to color, taste, and appearance to Coca-Cola, for eight or ten years. I have heard the word dope used long before I went into the bar-tending business, when I was still a baker. I understood the word dope to mean as applied to soft drinks, that they wanted a drink of that kind, a Cola drink. I did not know that they wanted any specific kind of drink. If a

(Deposition of A. F. Ensinger.)

man came into my place of business where I was serving beer and asked for "Bud," I don't know what he would mean by "Bud"; if I had Budweiser I expect I would give it to him. I started out in this life in the business of a baker. I have known this drink Coca-Cola fifteen years or better. I cannot recall what other drinks were on the market at that time—it is too far back. I have been trying to recall them for several days. There was one man here who made a drink almost that far back. I cannot recall the name. I know the drink was here, a drink similar to Coca-Cola. I do not remember the name or the man. The man who made it is down here in Trenton, Georgia, now, or he was there the last time I heard of him. I think Coca-Cola was on the market long before any of these other drinks. At the time I was a baker in the baking business I knew Coca-Cola. I expect I heard the word dope before these other drinks were on the market. It has been something like two years since the first time I heard the word Koke. It was in Chattanooga. I have been serving it for two years about; I get it from Chattanooga Bottling Works. I do not know where the first came from; I bought it off the wagon here in Chattanooga. I heard of Koke before that time. I have heard of this product Ala-Kola a number of years. Tru-Cola has been on the market quite a while, about the same length of time as Ala-Kola. Have known Wis-Ola some time back, and Maud Muller, three or four [776] years, I expect. At the Stag Hotel when a person asked for Dope or

(Deposition of A. F. Ensinger.)

Koke I had no doubt about what they wanted because I had only one thing to give them. It was Koke or Dope.

Deposition of Tom Collins, for Defendants.

TOM COLLINS.

Direct Examination.

Fifty-one years old; live out on Kirby Avenue, Chattanooga, Tenn. Have lived in Chattanooga twenty-eight years. Business is steward at the Eagles Club; have been steward there three years. I dispense soft drinks in bottles. Some soft drinks we have are white soda-water, Koke, Coca-Cola, Poinsetta; I think that is about all. I know of Ala-Cola and this Maud Muller but we do not handle them any more. I have known of soft cola drinks on the market five or six years. The color of these cola drinks are the same as the color of Coca-Cola. I have seen the cola drinks I spoke of in bottles. I never noticed much about them, but it seems they all look about the same to me, in the same or near the same kind of bottle, as compared to Coca-Cola. I could not tell any difference much in the taste either. I have been handling this product Koke, I think, about a year. I have known of the product Root Beer and Sarsaparilla ever since I have been here in Chattanooga, about twenty-eight years. The color of Root Beer and sarsaparilla is about the same as Coca-Cola. Root Beer and Sarsaparilla has the same general color. If I saw a bottle of Coca-Cola setting on the counter, from the size of the bottle,

(Deposition of Tom Collins.)

color, shape and general appearance of the bottle, I could not tell whether or not it was a bottle of Coca-Cola or a bottle containing some other cola beverage. The bottles look about the same to me, that is, the Coca-Cola bottles and the cola bottles. Customers come in and ask for Dope. Of course they call all of them Dope, some of them do. I just ask what kind they want. Some say, "Give me a soda-water," others say "Sarsaparilla," and some says Koke, others say Coca-Cola, and others say they don't care what it is, and when they say they don't care, I go ahead and dab up anything that is closest, and if I get what they want, I let them have it, Coca-Cola, Koke, whatever it may be, or white soda. When a customer comes in *and* [777] I do not understand that he has made a specific and definite request for Coca-Cola only. Lots of times they come in and say give them a Dope. I ask them what kind. I know soft drinks, of some kind is what they want. I will generally ask, you know, and some call for soda-water, some for Koke, some for Coca-Cola; that is the way you go. In dispensing, when I have had customers ask for a Dope, and have dispensed to them a Cola beverage other than Coca-Cola, I have never had that beverage rejected on the ground it was not what they asked for. I would not know a Coca-Cola barrel if I saw one, or the color of a Coca-Cola barrel. I have known of other drinks on the market similar in taste and appearance to Coca-Cola, I suppose, for ten years. Some of the drinks of that kind are Star-Cola that tastes

(Deposition of Tom Collins.)

like it. I could hardly tell the difference. This Maud Muller tastes a good deal like it, that they used to have here, that is, to my taste it did. When a man comes in I ask him what kind of Dope he wants. Sometimes he says Koke and other times Coca-Cola. We handled that Ala-Cola, and Maud Muller, they called Ala-Cola Dope too. I never had Ala-Cola rejected by any of my customers when asked for by the name of Dope on the ground it was not what they asked for. I have been steward of the Eagles Club three years; prior to that time I had a soft-drink stand out on Market Street, a near-beer stand. I was there about three years; prior to that time I worked for Stanley and Bogleshat; they were running a saloon then; that was before prohibition. I was with them about three years and a half. Prior to that time I had a place of my own on Market Street for eleven years. I dispensed this drink Maud Muller in the Eagles Club. I never dispensed it before that. I think it came on when I was up at the Eagles Club, I am not sure. I dispensed Ala-Cola up at the Eagles Club and I think at no other place. I think that came out while I was there; that was the first I ever heard of it. I have been handling Koke about a year only at the Eagles Club. I never heard that word Koke used before, or I don't remember it while in the saloon business with [778] Stanley and Bogenshat. We did not have any other drink of that name, class or kind, similar to Coca-Cola. I have calls for Dope, and I give them soft drinks of any kind or character, and

(Deposition of Tom Collins.)

I would always ask what they wanted; some would say "Give me white soda," others would say "Sarsaparilla" and some Coca-Cola. I never give them anything unless I ask what they want. I never heard this word Koke used prior to the time I commenced handling Koke. When I served soft drinks, I served them from the bottles at the various places I worked.

Deposition of Joe Quinn, for Defendants.

JOE QUINN.

Direct Examination.

Forty years old. Live 803 Vance Avenue, Chattanooga, Tennessee. Have lived here about five years. Before I came here I lived in Nashville, I am now engaged in the near-beer business. Have been in that business about fifteen or eighteen years, five years in Chattanooga. We handle Koke, White Soda, Poinsetta, and Sinalco and this Panpepsin, we have that too. We get Koke from the Chattanooga Bottling Company. Ala-Cola we handled that, other cola drinks I handled besides that were Star-Cola, Mi-Cola and the stuff made by Mayfield, and had some made by Gerst—I forgot the name of it. I have known of Tru-Cola, and other cola products on the market similar to Coca-Cola, for ten or twelve years. There is no difference in the color of them compared with the color of Coca-Cola. They may all have a different taste but I do not see any difference to amount to anything, the same general taste. All the different drinks I have handled and know of

(Deposition of Joe Quinn.)

have been bottled. The bottles all look the same, I do not know that I could tell one from the other. I could not distinguish a bottle of Coca-Cola without the crown on it. I could not distinguish a glass of cola-cola by its color. I could not tell one from the other, both have the same color—a dark sort of color. I have handled Root Beer and Sarsaparilla, have known these two drinks all my life, I guess them two drinks have been on the market twenty years. Sarsaparilla is darker than Root Beer or [779] Coca-Cola. They all have that dark color. I should say between a brownish and a black color. All of it, root beer, sarsaparilla and all of them cola dopes, one is the same as another. I cannot distinguish a glass of Coca-Cola from a glass of Root Beer by the color. I guess Sarsaparilla is a little darker, that is all, but I can distinguish them by the taste. I do not know how long I have known Tru-Cola, I think now that is put up by Diehl, of Nashville, when I knew it. Deihl had one, and Gerst had one, when I was living there. Gerst was just about getting in the soda-water business about seven years ago, to the best of my knowledge, and Deihl has been in it about thirty years, I guess. I have known of the drink Diehl had on the market, I guess, fifteen or twenty years—let me see—I think they changed off and commenced using Mayfield's syrup, they claimed—I do not know what kind of a syrup. There was a drink named Ala-Cola that I was familiar with. A man by the name of Bowman had a stock company on Cherry Street, they were using Mayfield's stuff

(Deposition of Joe Quinn.)

in it. I have handled Coca-Cola up until about two and a half or three years ago. I am not handling it now. I quit handling it because this gentleman refused to sell me. (Indicating Mr. Cunningham, who was representing the Coca-Cola Company.) I do not know what position he holds, he was on the wagon and refused to sell to me. I started in handling Ala-Cola, and he said I should not handle both. He was on the Coca-Cola wagon, there was a negro driver, this gentleman was the salesman. That was two years and a half ago. I have had customers ask for dope every month while I was in it. When they come in and ask for Dope they want any kind of soft stuff. They come in and ask for Koke, and I give them Koke, but lots of them come in and say "Give me Coca-Cola," and I tell them I do not have it. At other times I will turn around and tell them that I have this Koke, and I will give you Koke, and if you do not like it you do not pay for it—I mean Ala-Cola—I tell them this is Ala-Cola and if you do not like it you do not have to pay for it." [780] One or two customers objected to any cola drink when they asked for Koke on the ground it was not what they asked for. I told them I do not handle Coca-Cola, I do not take your money if it is not what you want. Lets take a cigar, they sometimes say. It was well known that we did not handle Coca-Cola and still they asked for Dope and Koke. I would sell them the Chattanooga Bottling Company's Koke when they asked for Koke. I have heard the name dope as applied to soft drinks for seven or eight or ten years, as long

(Deposition of Joe Quinn.)

as I have been working around the business. In Nashville when they asked for Dope I gave them what we had in the house, if we had anything to give them; if I had Coca-Cola, I gave them that. If we had Koke—I did not have Koke, but if I had Gayola, I gave them that. When a customer comes in and asks for a Dope, I understand he had made a request for what I have in that line, I do not regard the word dope as a specific and definite nickname for Coca-Cola, no more than one of the others. I understand when customers ask for a Dope, they want anything we have got in that line. All of it is Dope to me, I do not know one from the other. I do not know, I guess they call that Koke Dope, I guess they call Coca-Cola Dope, and they call Ala-Cola—whatever we have got in that line, they call all of it Dope. Recently trade has been very strong for Koke—I have got them to call for the Chattanooga Koke. I have never seen a cola drink that was not substantially similar in color to Coca-Cola. I do not know about the taste; the color is all the same. Some might be put up in lighter amber bottles than the other. I have seen them, in fact, pick up either one of the bottles and they might not know one from the other without the stamp in here. The color of the Coca-Cola bottle handled by me in Chattanooga is black amber bottles, they use the same thing to-day. Of course, all use the same bottle, if I am not mistaken about it, I know they are. I have seen advertisements of the product Koke in Chattanooga. They brought around to me a few little hangers, with

(Deposition of Joe Quinn.)

something like Koke on them, when they first started out with it, but did not hang them up. [781]

Cross-examination.

Lemon Soda is not known as Dope. Sarsaparilla is not known as Dope. Root Beer is known as Root Beer. Panpepsin is not known as Dope, neither is Poinsetta or Sinalco. I do not know when I first heard of Koke. I have been in the business, well, fifteen or twenty years. I have not heard of Koke but since the Chattanooga Bottling Company started up. Before that I heard the name "Koke"—everywhere, anybody, everywhere, they call and say, "Give me a Koke." I guess they mean to give them the drink by the name Koke. Diehl's drink has been out, I guess, about ten years. It was a cola, Diehl's Star-Cola, I think. I do not remember the name. Gerst's cola has been out about seven years, I think, I had been over here about a year and a half before I heard of his soft drink. Since this Koke has been out, and a man comes in and asks for a Koke, I give him Koke, and if he specifies Coca-Cola I tell him I do not handle it. I do not know how long this product Ala-Cola has been out, between two and two and one-half years is my best knowledge. Gerst's cola has been on the market about six and a half years, at least about that length of time. I knew of other colas out before that, seven, eight or ten years, I do not know exactly how long. Koke, Coca-Cola, Gayola, Diehl's product and Gerst's product, those are the only ones I know of in all the places I have been working around over there. I have known of Coca-Cola

(Deposition of Joe Quinn.)

about the same length of time, ever since I have been in business, about fifteen years. When we handled it we had nothing but Coca-Cola, until Ala-Cola, to my recollection, about two and a half years ago. That was the only drink that—there was one drink called Dope, in town, and then Ala-Cola, and Harry Reed started and this man come along and told me I could not sell it. I told him there were his empties. When I handled Coca-Cola by itself, and a man asked for Dope, I gave him Coca-Cola, that was the only thing I had. Those little hangers that were given to me I think they were Koke, when I first started with Ala-Cola, the Ala-Cola people put out signs. When this drink Koke was first brought out, they gave me a few little hangers to hang up, but I did not hang them up. I do not have one of those signs. [782] If I remember the sign, it had red letters, Koke.

Exhibit I, is not it. I think it had the same type as the crown. When I served these drinks over the bar I pulled the crown off and set the bottle up on the bar with a glass. I threw the crown away sometimes, depended on how busy I was. Some consumers saw the crown and some did not. I think, if I am not mistaken, the Ala-Cola used a bottle that was blown, they could see it, there was no label on the bottle. No one uses labels that I know of. I told Cunningham to go and take his empties. Near-beer business is a saloon. It is supposed to be a weak stuff, you call it near-beer now and you will have the right name for it.

Deposition of F. E. Hooper, for Defendants.

F. E. HOOPER.

Direct Examination.

Fifty-seven years of age. Live 411 West Seventh Street, Chattanooga, Tennessee. Have lived here since November, 1883. Engaged in the retail grocery business. Business located 415 West Seventh Street, Chattanooga, Tennessee. I handle soft drinks. I handle most all the drinks that have been put on the market here for several years; I could not name the names of them. I do not remember them. I have handled cola drinks, I have handled Coca-Cola, I have handled Koke—I handle Koke, now, Digestol, and most all, I buy from all the wagons that go around town. I handled at one time Coca-Cola but quit handling it. Well, I bought some Koke from a neighbor that was an agent for Koke, and the driver come around and told me if I handled it they could not serve me any Coca-Cola. He said, if you handle Koke we cannot leave any Coca-Cola here. We cannot place Coca-Cola where there is any Koke. These cola drinks are pretty much the same color as Coca-Cola, all in dark bottles, and look alike. Some two or three drinks are pretty nearly exactly like Coca-Cola. I have never tasted any that tasted like Coca-Cola except Koke. Koke and Coca-Kola are the same in my judgment. They are dark bottles, pretty near the same size, and pretty nearly the same as Coca-Cola bottles. Koke bottles are almost exactly like Coca-Cola bottles; [783] only not the same

(Deposition of F. E. Hooper.)

printing on them, you know. I have had people come into my store and ask for Dope. When they ask for Dope, I say "What kind of Dope." I do not understand they are asking for any particular brand of drink when asking for a Dope. I do not regard that name as a specific and definite name for Coca-Cola. I handled Coca-Cola and Koke both for two or three weeks before they caught the Koke in the house, and when they asked for a Koke or a Dope, I asked what kind they wanted. They would designate themselves what kind they wanted, whether Koke or Coca-Cola. Some of the other people in town were handling Koke, and told me if I was handling Koke they would not let me have Coca-Cola; I wanted to handle both. I am buying Koke now. I said I would put the Koke in my house and try it out for a while before I let them know. I wanted to see if it would do as good as Coca-Cola and I found it went as good as Coca-Cola. He came in one day and found Koke in my ice-box. He said, "I see you have Koke in there." I said, "Yes, sir." He said, "We cannot leave any more Coca-Cola if you handle Koke." I said, "All right, go ahead with your Coca-Cola." I got Koke from the Chattanooga Bottling Company. When the people say they want Dope or Koke, I say, "What kind do you want?" Very often they will tell me they want soda-pop, sometimes Dope, sometimes Coca-Cola, but after I got to handling Koke, they said Koke sometimes.

Cross-examination.

I have known Coca-Cola ever since it was made

(Deposition of F. E. Hooper.)

and brought into Chattanooga. It was between twenty-five and thirty years, I reckon. I commenced handling it when it was first put on the market. We had Root Beer and stuff like that then. This drink Koke, I think it started about a year ago. There was a time when I was handling Coca-Cola and not any other drink of that kind. When they asked for a Dope or Koke then, I would ask what they wanted, they would say whatever they wanted. If they wanted a Coca-Cola, or a Root Beer, or anything else I gave it to them, whatever they wanted. If they [784] wanted a Coca-Cola, or a Root Beer, or anything else, I give it to them. There were two or three drinks that I handled at that time in dark bottles. Koke and Dope applied in my opinion to all drinks, to sarsaparilla and Root Beer, any dark drink, Dope or Koke applied to. I only sold the drink in bottles. Root Beer has been on the market a great many years, and the others have all been on since Coca-Cola. Coca-Cola is the oldest Dope or Koke I remember.

Deposition of M. J. Costello, for Defendants.

M. J. COSTELLO.

Direct Examination.

Thirty-six years of age. Live at 801 East End Avenue, Chattanooga, Tennessee. Engaged in nothing at all at present. Last Saturday night I was working at 9th and Cherry Streets at a near-beer stand. I have been engaged in that business six years, since the town went dry, but I have been in the whis-

(Deposition of M. J. Costello.)

key business for ten years before the town went dry. Ten years back I was a bar-tender, and also handled soft drinks. I have been handling soft drinks for ten years. Bottled goods, soft drinks, I have handled White Soda, Digestol, Sinalco, Ginger-Ale, Ala-Cola, Tru-Cola, Koke, Ryeola. The Coca-Cola drinks, Ala-Cola, Tru-Cola, and Coca-Cola, seem to me to all have about the same color. I never drank any of them. I sometimes used them for a chaser. All cola drinks I have known of have been put up in bottles. The shape, size and general design and appearance of the bottles of these other cola drinks compare with the bottles of Coca-Cola pretty much alike, there is very little difference in any of them. If there is, I have not noticed it. I have not given particular attention to any of them. I could not distinguish a bottle of Coca-Cola from these other drinks unless I saw the *corn* or name blown in the side of the bottle. I could not distinguish a bottle of Coca-Cola by its color, by the color of the drink inside of it. I do not think I would know a barrel of Coca-Cola if I saw it. I do not know the color of the Coca-Cola barrel. I have not noticed barrels of Coca-Cola setting on the sidewalk in front of soda stands around town, I may have saw it, but never paid any attention to it. I have had customers come into my establishment [785] and ask for Dope quite frequently. The last place I worked at did not handle anything else but Koke and Tru-Cola, White Soda and such, and it did not handle Coca-Cola. I give the first thing I get my hands on. It don't make any

(Deposition of M. J. Costello.)

difference. What the customer wanted when he asked for Dope was a soft drink, some kind of Koke, unless they specify what they want I give them the first I come to. You see the profits are about the same, and I just grab the first one I get my hand on. When a man comes into my establishment and asks for a Dope, I do not understand he is making a specific and definite request for Coca-Cola. I think if he wanted Coca-Cola and nothing else he would call for Coca-Cola. Other names customers use in asking for cola drinks, are, give me a Koke, a Dope, a shot, or something like that. When they used them while we were bootlegging, I knew they wanted whisky, but since, I know they want a soft drink. If they say give me a shot, I would give them a Tru-Cola or Koke. If I had Coca-Cola I would give them that, or whatever I got my hands on. Every day several ask for Coca-Cola and I tell them I do not have it and they will take what I have. Some few walk out. If he wants a Koke or a Dope. I suggest that he wants a Koke or a Dope, that is about all alike, and I suggest that to him. I do not know. I have on several occasions, gone to a drug-store, and said, "Give me a Koke," I would not know what he gave me. I would not know any difference. When I went to a soda-fountain and asked for a Dope, I expected to get what he had in that line, whatever it was. No particular brand. I regard Koke and Dope nicknames for cola drinks, as a class. I have handled Coca-Cola, last Fall I handled it up to last February. You will have to ask my bar-tender why

(Deposition of M. J. Costello.)

I quit handling it, I was not present when it occurred. I was serving my sentence for selling whisky. They claimed he was short on bottles, or something or other, but anyway, he refused to buy Coca-Cola because we had Ala-Cola, but just the reason I do not know. I have never seen a cola drink not the same general color as Coca-Cola. They are all pretty much the same color. If some one set them out for me I [786] might not know whether it was Koke or Tru-Cola or Coca-Cola; I do not think I could tell the difference myself. I have had this little experience, I will state that when this Koke first come out I got to talking about it. I am not sure about that, I think it was Jim Williams, he is dead, and I hate to bring up a statement of a dead man, I switched glasses, and set them up in front of the wrong bottles to see if he could tell. I knew, I had them marked, and he picked up the Koke and said that was the Coca-Cola and tested both out and set the Koke out for the Coca-Cola. I can prove that by good witnesses, to that effect. He took the Koke for the Coca-Cola. It was not a sale, understand, it was mostly a joke, to see if he could tell.

Cross-examination.

Koke came out, I suppose, about a year ago, that is when I first hear of it. When I was proprietor, I always tried to divide the stuff up among the boys the best I could, they are all good boys on the wagon, if I could handle the stuff and there was any demand at all for the stuff, any way to use it, I divided it the best way I could, Tru-Cola, Ala-Cola, Coca-Cola and

(Deposition of M. J. Costello.)

the others. Koke and Dope both applied to any kind of cola drink. I never did handle Coca-Cola exclusively at all. I have been a bar-tender about ten years and during that time I have been handling soft drinks. I knew of cola drinks for five or six years. I have not handled Coca-Cola lately, I have handled it during the last ten years, but about six years is as far back as I can refer to handling any certain beverage. Ten years they would come in and call for a "koke" or a "Dope" and they would use the same dope. It has always been customary, I would give them first one thing and then another. The bottled Koke cost me seventy cents a case. Ala-Cola sixty cents. Tru-Cola sixty cents. Coca-Cola seventy cents.

Deposition of A. W. Stanley, for Defendants.

A. W. STANLEY.

Direct Examination.

Fifty-eight years of age. Live in Chattanooga, Tennessee. I am in the hotel business. I have had a saloon until they closed it up. [787] I had a saloon for about thirty years in Chattanooga, Tennessee. I dispense soft drinks. I am about the bar and can hear the requests my customers make for the different drinks they want. I tended bar for twenty years. We handled Maud Muller, Sinalco and used to handle Coca-Cola until we got to handling Koke. Henry Boerger used to put up a drink I used to handle. They claimed it would take the place of Koke—Coca-Cola, I have forgotten the name of it.

(Deposition A. W. Stanley.)

I do not remember the drinks on the market similar to Coca-Cola; ten or twelve years ago, I never give it a thought, you know. The color of those drinks compared with Coca-Cola, some of them, now this drink I was trying to think of the name of, that Henry Boerger got out, his was one of those cola drinks, Maud Muller is about the color of it, I think it is, I never drink anything but whiskey, I may have tasted it, but I don't remember it. I have handled Tru-Cola and Ala-Cola. They were all about the same color as Coca-Cola, that they tried to make them so there would be competition or they would take the place of coca-cola. These drinks were put up in bottles, they were all about the same, all black bottles. I cannot distinguish a Coca-Cola bottle from a bottle of these other cola drinks that I know of, unless I saw more than that, the name blown in the glass. I could not distinguish a bottle of Coca-Cola by the color of the drink from these other drinks. I have handled Sarsaparilla and Root Beer. How long I could not tell, it has been a great many years, though, Sarsaparilla. The color of those drinks compared with the color of Coca-Cola, I guess about the same color, dark. I have never seen a cola drink that was not substantially the same color as Coca-Cola. My recollection is that they are all about the same kind of bottle. I have noticed Coca-Cola barrels sitting out in front of drug-stores around town. I used to buy Koke by the barrel, Coca-Cola, I mean. I did not dispense in a soda-fountain. I do not know as I could tell a Coca-Cola barrel if I saw it, because a

(Deposition A. W. Stanley.)

great many other barrels are the same color, I reckon. Catawba wine, we used to get Catawaba wine in red barrels, painted red, you know. I have had customers come into my establishment and ask for a Dope. I asked what kind of a dope they wanted, some would say Coca-Cola, and [788] some would say "Give me some of that new drink of Reif's, that Maud Muller," and such things like that, you know. If he would say a dope, of course, before Koke or any other drink was introduced, come in, and we only had Coca-Cola, I would understand he wanted Coca-Cola. Lots of fellows would come in and say, "Give me a dope." I would say, "What kind of dope do you want?" and he would say, "Give me Coca-Cola, or give me something else." You know sometimes they call Coca-Cola dope, you know how these fellows are. Customers ask for cola drinks by saying, "Give me a shot at cocaine." If they ask me to give them a shot of cocaine, Coca-Cola is, I suppose, what they want. A great many people think Coca-Cola has cocaine in it, you know. I have heard people argue that. I do not know why they thought it.

Deposition of Burton Jones, for Defendants.

BURTON JONES.

Direct Examination.

Thirty-seven years of age. Live at St. Elmo, Tennessee, a suburb of Chattanooga; have lived there about seven or eight years; am engaged in the drug business right at the foot of the mountain, St. Elmo. I have a soda-fountain in my establishment. We

(Deposition of Burton Jones.)

dispense all the common drinks on the market to-day. I dispense cola drinks. Coca-Cola and Tru-Cola, the latter about three years. The color of Tru-Cola syrup is a brown liquid about the same as Coca-Cola. I could not distinguish the difference in color between the Tru-Cola syrup and Coca-Cola syrup. I could not distinguish the difference in color between the finished drinks as served at the fountain, and Coca-Cola. I could not distinguish the difference in taste between Tru-Cola and Coca-Cola. We get Tru-Cola in a red barrel, the syrup comes in red barrels. I have had calls for dope at my establishment, when a customer asks for dope, he wants a cola drink of some kind. There are so many substitutes on the market, they might want a cola drink. I do not know about that, I would not say positively they would want a cola drink, or want one of the same articles. I would not say what he would want. We have had circulars from a lot of people wanting to sell us some other cola drinks; Koke, Dope, Star-Cola, [789] Afri-Cola, and there may be more, just circulars. When customers come to my store and ask for "a dope," we serve Coca-Cola, we have nothing else in the house but Coca-Cola. At the time we had Tru-Cola we usually gave Tru-Cola. They were satisfied with it, anyway I gave them the dope. None of them ever refused Tru-Cola on the ground that it was not what they asked for. I had a call from an agent of the Coca-Cola Company about a year ago. He came in, I believe about the first thing he said he wanted to see the manager, and they sent him back to me. I was at

(Deposition of Burton Jones.)

the desk at the time. He introduced himself. At the time I do not believe I remembered his name right now, but he came back and said he was the representative, legal representative, of the Coca-Cola Company, of Atlanta, Georgia, and that he wanted to have a little talk with me on Coca-Cola business. And he says, "Now, we have been understanding that you have been serving a substitute for Coca-Cola." I said, "Well, we have been serving Tru-Cola here a part of the time, that is a fact, we have," and then along with the conversation he told me that we had probably violated the law. I did not know. I did not know the seriousness of what we were doing, something like that, and that there had been cases where certain people, I believe in Savannah, I won't say positively, had been put out of business for handling others. I said, "If we don't do it, we would sure like to know how they could put us out of business"? That was about the gist of it. I do not know that he said he would sue me, but he made it such a strong feature, that that was their intention to make people go to handling the genuine Coca-Cola, handling Coca-Cola exclusively, for they come to get me to sign up this. The gentleman wrote out quite an article there that I signed, but I do not remember all that was in it. Just covering about what I have said, about as near as I can repeat, about what I have said that we would not handle anything else besides Coca-Cola hereafter, that was the trend of the whole thing. I signed it sorter not knowing what else to do. I did not hardly have time to think what I was doing. I

(Deposition of Burton Jones.)

[790] guess we talked there about an hour one afternoon, probably no more; of course I was up occasionally waiting on the trade. What I understood—it was a case of kinder making me think I was going to get into trouble if I did not quit. I signed the contract to avoid getting into trouble with the Coca-Cola Company. I did not want to get into trouble with anybody at all. He intimated to me that I would get into trouble if I did not sign the contract, that was the way I understood it, that way, that we were going to get into trouble if we did not quit selling Tru-Cola and other cola drinks; that is, if we should substitute for Coca-Cola. He said that he had some evidence that we had at certain times served off a substitute, I don't believe I know the exact words, for Coca-Cola here on a certain date, somebody called for Coca-Cola, and they got the other article. I told him I did not know for certain, that is what I remember. I said, "I don't remember for certain about that, now," for the reason I do not believe we had any of the substitutes in the house at the time, but I investigated and the gentleman called for the genuine Coca-Cola, for we never had the other stuff in the house at the time he was making his inspection trip, for we had gotten out of it, and had moved into the other house, and in order to keep from having so many barrels and such as that, we kept handling Tru-Cola, and we never had the other on hand at all. The circumstances were about those. We were in an old building which was about to fall down, and we moved down to another building to put up a new building,

(Deposition of Burton Jones.)

and while we were down there, we got out of the Tru-Cola, consequently we never bought any more of the Tru-Cola. We did not have room down there, that was it, and the gentleman got the genuine Coca-Cola when he called for it, for I looked that up after he left. I believe you were the gentleman who called on me (indicating Mr. H. B. Pierce).

Mr. PIERCE.—Yes, sir; I was the gentleman.

Yes, sir; that is the gentleman who called on me over there. We have never intended to ever substitute for we had both in the house all [790½] the time, both Tru-Cola and Coco-Cola. The Tru-Cola cost us less than Coca-Cola. It gave satisfaction; I never had any trouble, nobody refused it that I remember of. Mr. Pierce did not tell me what kind of agent that was, or person that was, that called, but he gave me the dates and certain times, and I was not in the store on those dates and at those times and did not know anything about it, and I inquired of the men and boys in the store about that date, if such and such a thing happened and they said, “Yes, that they remembered it very well, and I remember that they said a Mr. Smith was out there, but they had his name wrong in the store, and I asked every one in the house and found about that later who it was that let him have it, and he was just working here for a short while, I mean he had not been working there very long, I mean, this clerk. When customers came in and asked for a dope, to be plain, I do not know whether they were wanting Coca-Cola, or a cola drink, or what, and I began asking around about that, and

(Deposition of Burton Jones.)

they said, "Well, I guess there is more substituting and more drinks than there is of Coca-Cola sold on the market to-day." I mean that was it, and I was in the crowd with the balance of them, that was all there was to it. It was never our object to substitute for Coca-Cola any more than we would drugs, or anything like that, for the reason that we kept both of them. We quit handling Tru-Cola because of fear of consequences intimated to us by Mr. Pierce. I talked it over with my partners; we got sorter mad when Mr. Pierce came and said and they said, "I would not let him talk to me that way." Well, he made me mad. He said "A man talking to me that way, I would run him out of here," something like that. I said, "Let's talk this thing over." I have tried to keep my head and try to reason the thing out, would it pay us to get into any kind of lawsuit, even if we won, I said that to my partners, would it pay us to get into a lawsuit with the Coca-Cola Company even if we should win? I said, "I do not want to get into any trouble." I said, "I called up Mr. Connor in Alton Park, and I said Mr. Connor, have you [791] got Tru-Cola"? He said, "Yes, I have got Tru-Cola," and I said to Mr. Pierce at the time, I said, "How about what we have got on hand, how about letting it go on as Dope or something like that?" He said, "Go ahead and get rid of it as you have been doing and let that go." I never used dispensing bottles. I had those in spigots. Only occasionally we may have one for some new drink, but we have a reseptacle for it in the soda-fountain. We

(Deposition of Burton Jones.)

had Coca-Cola and Tru-Cola in different containers, one on each side of the fountain.

Cross-examination.

Mr. Pierce conveyed the idea to me that somebody there had been substituting for Coca-Cola. He told me that it had been done. We handled Tru-Cola. It seems to me like it was three years prior to the time Mr. Pierce paid me the visit. When a man came into our place of business and asked for a Koke or a Dope prior to the three years we handled Tru-Cola, we would give him Coca-Cola to drink, and when we put that Tru-Cola in, when he called for a dope or such as that, we gave him this Tru-Cola. Prior to that time I was new in the business and understood that he wanted Coca-Cola. We have had calls for Tru-Cola at our fountain under the name of Tru-Cola. I think we have, as near as I can remember. I do not know for certain about that, for there were a plenty of people who knew about this other drink, and probably at some time they might have called for it. I would not say.

Q. 82. Did you sign this statement: "During the short time we have handled Tru-Cola, we never had a call at our fountain for "Tru-Cola" under its proper name of "Tru-Cola"; at least we have never had any number of calls for Tru-Cola that would be noticeable, and I do not believe that under past and present conditions that we could sell a gallon of Tru-Cola syrup through our fountain in a year's time under its proper name of "Tru-Cola"?

A. I might have signed it, I do not remember.

(Deposition of Burton Jones.)

There are people that do call for Tru-Cola that knew of this other drink. What you [792] read is a pretty fair statement. When we first put in Tru-Cola and a person came to our place of business and asked for Koke or a dope we gave him Tru-Cola. We started immediately giving Tru-Cola made here in Chattanooga; I suppose, if a man noticed anything about it, I think probably we might make the statement, well, you cannot tell the difference so far as that is concerned, we might have made such a statement as that. Up to the time we put in Tru-Cola when people asked for a koke or a dope they wanted a cola drink. I suppose, Coca-Cola. So far as we know at our place of business, this Tru-Cola was never substituted for Coca-Cola, or put out under the name of Coca-Cola. I do not know what they meant by Koke or Dope. We could not tell. Before we put in Tru-Cola, we gave Coca-Cola. Had nothing else to give them. I suppose very few knew that we had such a drink as Tru-Cola. Tru-Cola cost a dollar a gallon. Coca-Cola cost an average of one dollar fifty, or one fifty-five. It was our instructions to always serve Coca-Cola when called for. We gave those instructions when we put in two similar drinks. We wanted to keep them separated and not to get them mixed up. They were similar drinks, and it was not our intention to substitute, it was not our intention to substitute in that way. I have been in the drug business about seven years, I believe, a little over. Up to the time I started handling Tru-Cola three years before January 8, 1914, I only handled

(Deposition of Burton Jones.)

Coca-Cola and nothing else of that kind. Northern people come in there and say, "Give me a dope," and, naturally, we give them a cola drink, but they say that is not what they want, but that is up North. We have a great many tourists that call ice-cream soda 'dope,' that is what they call it. Up to the time we put in Tru-Cola we served Coca-Cola for koke or dope, that is what we understood it to be. I served them only koke or dope I had prior to the time I put in Tru-Cola. And then when I got two kinds I served first one and then the other. If I had had any other cola drink on hand besides Coca-Cola before I began handling Tru-Cola, I suppose we would have done the same as I did do when I handled both. You see I had both, and after I began handling Tru-Cola, I had both. [793]

Recross-examination.

At first when handling Coca-Cola, if men asked for a Koke or a Dope I gave them Coca-Cola, and after I put in Tru-Cola and a man asked for Koke or Dope I gave him Tru-Cola. I changed because there was fifty cents difference in the price of the syrup.

Redirect Examination.

I handled cigars also, and have customers come in and say, "Give me a cigar." If he does not point out some particular brand he wants, I usually give him a bunch of cigars made here in Chattanooga that costs us \$31.00 or \$32.00. I also handle Hires Root Beer; it is dark brown, nearly the same color as Coca-Cola.

Deposition of R. L. Wayman, for Defendants.**R. L. WAYMAN.****Direct Examination.**

Forty-eight years of age, live in St. Elmo, on Fourth Street, Chattanooga, Tennessee. Have lived in Chattanooga, Tennessee, about twenty-four years. I have been engaged in the near-beer business a little over six years. I handle soft drinks in connection with my business, some of them being, Tru-Cola, White Soda, Red Soda, Maud Muller, Poinsetta, Sinalco, Koke, Dope—they call it Dope. Other cola drinks I have known of are Ala-Cola. I have known of these other Cola drinks ever since I have been in business since they have been out, except Koke, and that has been out about a year, that is in Chattanooga. All I know of it the color of these different cola drinks compared with the color of Coca-Cola is about the same, I think; I never paid any attention. I don't think I could tell a glass of Coca-Cola from these other drinks by the color of it. There is some little difference in the taste; of course, I am not a Coca-Cola drinker. I do not suppose I have drank four bottles in my life, or of the other stuff either. They tell me a Coca-Cola drinker can tell the difference in a second. They have the same general taste, along the same general lines. These other cola drinks are put up in bottles. Coca-Cola bottles are a little different to some of the other bottles. Some difference in size, a little difference in shape, but the bottle [794] is about the same kind. I have customers come in and ask for Dope.

(Deposition of R. L. Wayman.)

I give them, when they ask for Dope, Dope, Koke, Tru-Cola, Ala-Cola, something like that. When customers ask for Dope they want some sort of soft drinks. They would ask for Coca-Cola if they wanted it. I have had people call for Coca-Cola, and I told them I did not have it, and they would say, "Give me something else." I have not handled Coca-Cola for many years. If a customer comes into my establishment and asked me for a dope, I do not consider that he had made a definite and specific request on me for Coca-Cola, and nothing else, they call all these soft drinks Dope. I never had any customers refuse any other cola drink on the ground it was not what he asked for, when he asked for a dope or a koke and some other drink besides Coca-Cola was served that I can recall. He can tell whether or not he is getting that or Coca-Cola. The Coca-Cola bottles here all have the name on them, blown in the glass, and the other bottles have not. One says Union Bottling Company, and the other says Chattanooga Bottling Company, and the Ala-Cola, of course, that is not out, I do not believe, but they had a bottle similar to the Coca-Cola bottle, I think their's was blown in the bottle, but the other people, Chattanooga Bottling Company, their stuff has a great round lettering blown in the glass, also. I have had customers who came in and asked for Dope and knew that they were not getting Coca-Cola, and who seemed to be satisfied with what they got. Cola drinks are the same general color as Coca-Cola, about the same, very little difference. Cola drinks taste almost alike, that is,

(Deposition of R. L. Wayman.)

I could not tell the difference. I have seen Coca-Cola barrels being delivered to soda-fountains around town, or sitting out in front of soda-fountains. I would not know a Coca-Cola barrel if I saw it, all I would go by would be the name on it. I have handled Coca-Cola. I quit handling it; the other is a little cheaper, is the only reason, cheaper to me.

Cross-examination.

I am the owner of this near-beer business. About three years I was [795] manager of the Wakeman Distilling Company. Mr. O'Grady is one of the owners, I suppose. Mr. O'Grady has not a nickel's worth of interest directly or indirectly, in the near-beer establishment I am not proprietor of. He does not sell me stuff. I am buying from the Chattanooga Bottling Company. I have handled his brands. The names of his brands are O'Grady Special, Old Wakeman. They sold to Little, of the Lexington Brewing Company. I bought a place two blocks this side of theirs. I have not had any connection with O'Grady in two years. I have known of this drink Koke since I have been in this lower place of business, that is about a year, I expect, or a little less. I never heard of the expression Koke before that time, at my bar.

Q. 57. Have you ever heard the expression Koke used before the product came on the market?

Mr. LITTLETON.—I object to the question and the answer on the ground that there is nothing in the direct examination of the witness to warrant it.

(Deposition of R. L. Wayman.)

Objection overruled and appeal prayed and granted.

A. I have had them call for Koke and Dope. The greatest word they use when they want a soft drink is Dope, that is all I can remember. If they call for Coca-Cola I do not have it. When a man came into my store and asked for a Koke, prior to that year, I have known of a product labeled Koke, I would have told him I did not have it. I heard of this name Koke before the product Koke came out. I would tell them I had some Dope, and they would say, "All right, let us have it." In other words, they used the words Dope and Koke to just mean anything. I have stopped handling Coca-Cola off and on, two or three different times. The last time I handled it I think I got one or two cases of Coca-Cola when I bought this place out, the one I am in now, and I have been there a year and six months. That was the last time. The first time I ever handled Coca-Cola was six years ago. I have known of it a long time; I have known it practically ever since it has been out. I never handled [796] any, but I have seen the crown "Dope" here in Chattanooga. I am not positive whether it was here or in some other city, but I do remember seeing the crowns with D-o-p-e on them. I have sold other drinks when that was called for. Tru-Cola, Ala-Cola and Koke, that is what I call Dope. I never sold Coca-Cola in response to orders for Dope. If he asked for Coca-Cola I would give it to him; if he asked for Tru-Cola, I would give him Tru-Cola. I never sold Coca-Cola when Dope was

(Deposition of R. L. Wayman.)

called for. If a man asked for Coca-Cola, I gave it to him; if he asked for Dope I gave him what he wanted. I do not let Dope apply to Coca-Cola. If a man asks for a soft drink, I ask what kind he wants, but you might apply Coca-Cola to Dope, too. I have always handled these soft drinks I have given. When I was handling Coca-Cola alone, I would give that in response to calls for a cola or a dope. I have asked them what they wanted when they asked for Dope. I always give a man what he asks for. I handle these other drinks I have stated, because they are a little cheaper. I have only had two cases of Coca-Cola in my house in the last four years. If they asked for Dope I give them Dope; if they asked for Coca-Cola I give them Coca-Cola. Coca-Cola is a Dope like all the rest of the soft drinks. Dope applies to all soft drinks, all dope stuff. Most invariably, when a man calls for dope I ask what kind of dope he wants. I have known this drink Ala-Cola about a couple of years. Tru-Cola I have been handling that ever since I have been in the business. I do not know whether it has been under the name of Tru-Cola or not, but I have handled that three or four years, anyway. Maud Muller is a recent drink, it has been out about a year, I understand.

Deposition of C. P. Embrey, for Defendants.

C. P. EMBREY.

Direct Examination.

Thirty-nine years of age, live in Chattanooga, Tennessee. Engaged in retail drug business, located

(Deposition of C. P. Embrey.)

600 Market Street. Been in business on that corner seven years. Have soda-fountain in connection with the drug-store. I dispense soft drinks at my soda-fountain. I dispense cola drinks there, and I dispense Coca-Cola, and one named Ko-Nut—some of this Koke in, too. The product Koke is made here [797] in town by the Koke Company of America, I think. Other Cola drinks I have known of used to be one made by the National Beverage Company. I have heard of Tru-Cola. There are so many nearly everybody who opens his grip when he comes in has a cola syrup to sell, and, naturally, you would not remember all that comes around; there is a great many cola drinks on the market. The color of the syrup of these different cola drinks are identical with the color of the Coca-Cola syrup. I have tested mighty nearly all of them; the taste of these different cola syrups compared with the taste of Coca-Cola, well, there is some identical, some-better, a little bit, and sometimes when you put carbonated water in them, if the carbonated water is heavily carbonated, it will change the flavor a little of most any of them. I could not distinguish a glass of Coca-Cola by its color. I could not distinguish a glass of Coca-Cola from a glass of Root Beer, both are dark brown. I have known of the drink Root Beer fifteen or twenty years, I reckon. The completed beverage that I dispense is made from syrup and added carbonated water. The root beer I have known in the past fifteen or twenty years has been substantially the same color as it is today. Some cola syrups I have handled come in red

(Deposition of C. P. Embrey.)

barrels and some in plain barrels without paint on them at all. I could not tell a Coca-Cola barrel if I saw it and did not see the label on the end of it because they are all colored red, about the same thing. When customers call for dope, we give them the one we make the most money on. I do not regard the word dope as a specific and definite request for Coca-Cola, exclusively; I regard it as a nickname for that class of drink. I have heard the word dope, I will say ten years, but during all that time it had the same meaning to me that I have just stated. Dope at a soda-fountain means a drink that exhilarates, like caffiene drink, and dope at a prescription counter means some narcotic used in an abnormal way, or used in excess, that is the way I look at it. The way I look at it, it has been in litigation that Coca-Cola or any of those dope products are injurious to you, you see, and then people just got the idea that the [798] drinking in excess would injure, that is the way the public would think whether it was true or not. I have heard some say, "Do you reckon it will hurt me to drink four or five before dinner," that is the way I think it came about, just like in medicine, if it was used in a small way it would not hurt, but if used to excess it would be very harmful. If every one of these drinks are fixed right and the carbonated water was right, and the ice was right, I have never had it rejected so far as I know. We do not handle Hires Root Beer; we have not for years. I cannot tell any difference between the Root Beer we handle and Hires. The color is about the same. I have had

(Deposition of C. P. Embrey.)

calls for Hires Root Beer, and told them we did not handle that, but handled Smith's Root Beer. The customers would be satisfied. They wanted a drink of that main general description. That same situation applies to the cola-drinks. I have had a representative of the Coca-Cola Company call on me January 9, 1914. This gentleman setting over here, Mr. H. B. Pierce, called on me. He came into my place and said he wanted to speak to me privately, and dictated on a pad, with a pencil, dictated about a three page manuscript that intimidated me and bound me not to handle anything else except Coca-Cola, or he would threaten me with suit if I did not do it; and I thought it was better to sign up than—until I found out whether I was right or wrong—than to get into litigation. I signed that contract unwillingly, it was either sign it or be sued. He threatened to sue me because I handled Ko-Nut; one thing I recollect, he had some copies of way-bills, shipped from Atlanta, as evidence that I had been buying—or bills of lading, rather. I signed the contract. I have not quit handling Ko-Nut. I found out afterwards I had a right to handle both, according to my attorney, just the same as I had a right to sell a bottle of Peruna, or a bottle of "S.S.S." I consulted an attorney about it, W. B. Miller; he advised me to go to law about it, but I told him I could not afford to do it. I did not have the money; I did not have it. In fact, I could not afford [799] to go into litigation about a thing like that. In other words, it would be cheaper for me to sell Coca-Cola than to hire an attorney.

(Deposition of C. P. Embrey.)

Cross-examination.

I pay one-fifty a gallon for Coca-Cola. One dollar for Ko-Nut. One dollar a gallon for Koke. I get five cents for a glass of Coca-Cola over the fountain. Five cents for a glass of Ko-Nut. I have been handling it ever since I have been in business, I think. Ten years, I think. I have been handling Ko-Nut three years, I think. I signed a statement like this—"During all the time I have been in business at my present location I have sold Coca-Cola through the soft drink fountain, up to some time in 1912, when I began buying Ko-Nut syrup from Hagan & Dodd of Atlanta." I started selling Koke I think about a year—maybe two years, time passes so fast I do not know whether it has been a year or two years, I have known of Koke about two years. Before I knew of the product Ko-Nut and the product Koke, there was a product called Afri-Cola, it was in extract form, but it did not have a flavor which had been perfected so that it was a desirable drink and we didn't keep it. This drink was not palatable. It was not the flavor Coca-Cola had. That was the flavor they were getting at, and did not get, that was the reason it did not go. I handled Coca-Cola before I handled this Afri-Cola. Afri-Cola sold at seven dollars a gallon in extract form. It was cheaper than Coca-Cola. I heard the term dope used. At that time there was no other drink on the market but Coca-Cola, and I understood that was what they wanted. That was what I under-

(Deposition of C. P. Embrey.)

stood they meant by Dope. At the time I handled Afri-Cola and Coca-Cola alone and a man came in and called for a dope, I gave them Afri-Cola. Because of more profit. When I put in Ko-Nut I gave up Afri-Cola. Afri-Cola is not nationally advertised, I do not think. When a customer asked me for a dope I gave him the only thing we had, Ko-Nut. The drink was palatable and pleasant to the taste and another reason was because I made a better profit. Now, when a person asks for dope, I give the one we [800] make the best profit on, which is either Koke or Ko-Nut. I do not think Ko-Nut is nationally advertised as a drink. I do not think Koke is nationally advertised. I have had calls for Ko-Nut under its name, just a few local calls for it, people that know I have it. We serve Koke when dope is asked for. I have been handling Koke for about two years. Commenced using one urn for Coca-Cola and one for Ko-Nut or Koke since January, 1914, before that time I was serving both ways, in bottles. I had one bottle sitting on one side. I might have served Ko-Nut, Coca-Cola and Dope out of the same urn. I know we don't substitute it, we kept it straight there, we had a bottle on the side that had Dope in it. We never served in response to a call for Dope out of the same urn we served in response to a call for Coca-Cola. We had two different urns to put the labels on. I never did do that, I know I did not do it intentionally, it is possible I may have done it. I purchased Coca-Cola prior to January 9, 1914, from Trigg, Dobbs & Company,

(Deposition of C. P. Embrey.)

and from Fritts & Wiehl. I think I bought a barrel or two. Before buying this Ko-Nut and Afri-Cola, about three barrels per year.

Q. 155. You made this statement, did you not: "So far as I understand and know, we have never had a call for Ko-Nut at our fountain under its proper name of Ko-Nut; but have always sold Ko-Nut as a substitute for Coca-Cola and Dope. I have purchased about eight barrels of it, from forty-six to fifty gallons each, of Ko-Nut syrup, in the past two years, and during that time I purchased about three barrels of Coca-Cola syrup from Fritts & Wiehl, Chattanooga, Tenn.

A. I may have signed that; but under intimidation I would sign anything. I had to sign anything in order to avoid litigation. I wanted to have this gentleman make two typewritten letters so as I could see what I was signing. He would not let me have it typewritten, he wanted it secretly, so I would not have a chance. I signed a statement reading something very much like that.

Mr. HIRSCH.—I will read it again; "So far as I can understand or [801] know we have never had a call for Ko-Nut at our fountain in its proper name of Ko-Nut, but have always sold Ko-Nut as a substitute for Coca-Cola and Dope."

A. If I signed that I was not in my right mind. Mr. Bogart was present at the time the statement was signed, he is a clerk at the store. There is another clerk, I do not know whether he knew anything about it or not. Tom Duff came in about that

(Deposition of C. P. Embrey.)

time from Fritts & Wiehl Company, he came up about the time I signed it.

Q. 182. I will read further: "I have purchased about eight barrels of from forty-six or forty-eight gallons each of Ko-Nut syrup in the past two years, and during which time I have purchased about three barrels of Coca-Cola syrup from Fritts & Wiehl, Chattanooga, Tennessee, and Trigg, Dobbs & Company of Chattanooga, Tennessee."

A. That is true. During the year 1913 I kept Coca-Cola in a container or dispensing bottle and when a man called for Coca-Cola I gave that to him. When a man called for dope I always went to some other container and got it out, that is, prior to January 9, 1914, since then I have two containers. I started handling Koke probably two years ago. We had the Koke and Ko-Nut we served out of the same container. We have mixed them frequently, but we have dispensed Coca-Cola with simple syrup added to it. I have not mixed Coca-Cola, Ko-Nut and Koke together not that I know of. The dispensing bottle with the Ko-Nut and Koke in it had no label on it. The bottles are glass and the labels wash off, sometimes this dispensing bottle is not labeled. That label depends upon which one we had, Koke or Dope, we did not mix Ko-Nut and Koke, we dispensed those things, that at one time we had Koke and another time we had Ko-Nut in it. Since about January 9, 1914, we have not had Ko-Nut, Koke and Coca-Cola all the time. We have not had Koke all the time. I have always had some Coca-

(Deposition of C. P. Embrey.)

Cola in my house. There was a time when I had all three in my place of business at one time. Have had all three in my place of [802] business at one time and had Coca-Cola in the container in my fountain. We have dispensing bottles for the others, one dispensing bottle for Koke and one for Ko-Nut, and have one for the other. We had eight or ten bottles. We had one representing each drink, one representing Ko-Nut and one representing Koke. The Ko-Nut bottle was labeled Ko-Nut. We have one with Koke on it, the dispensing bottle was furnished us, sometimes it got broken and we put it in something else. (Exhibit No. 1, Henry Boerger's testimony shown.) It was "K-o-k-e," a different size but looks like the same form. When a man came in and asked for a dope at that time I had those two dispensing bottles up there and Coca-Cola in the fountain, I gave him either one, Koke or Ko-Nut. I never gave him Coca-Cola because I thought it was more profitable. I quit selling Coca-Cola in response to calls for Dope when these other drinks came out which were cheaper. I had a soda-fountain dispenser. As to whether he ever sold Coca-Cola in response to a call for dope, I do not know, a boy of his age may have served either one of them, he may have done it but I did not do it. I do not know anything about the soda-fountain only in a general way. I served the soda-fountain as an apprentice ten or fifteen years ago. The first time I ever heard of Coca-Cola, it was in sealed quart bottles; they served it over the fountain. At that

(Deposition of C. P. Embrey.)

time we did not know anything about Coca-Cola out in the country, or know how to serve it, but we took that quart and put it in three qparts of syrup. At the time of my apprenticeship I did not know about these drinks. When a person came in and asked for a dope I gave him Coca-Cola, but since these cheaper products have come on the market we give the cheaper product. That is the instructions at our place to our men. I do not know what they give in response to orders for Dope. When a customer comes up to our fountain and asks for a dope I do not know what the boy gives him. I think he carries out my instructions. These containers are kept in a slab in front. We have these pumps that slide down too. [803] You pump it with one and the other you have to take the bottle out. I have never substituted Ko-Nut when Coca-Cola was called for. Mr. Pierce told me at the time of the conversation that what he wanted to see me about was the alleged substituting these other drinks when Coca-Cola was called for. That led to this agreement. He came in and told me that there would be a suit if I did not sign the paper, and I did not know at that time that I had a right to handle anything but Coca-Cola. Until these cheaper products came on the market I understood Dope to mean Coca-Cola. The cheapness of the product was what changed me. It is not a fact that when such syrup as Ko-Nut is sold to a dealer, it is understood that the dealer can use such syrup as a substitute for Coca-Cola. About the time this salesman came in

(Deposition of C. P. Embrey.)

with this paper I was just going to dinner and in the way it came about I did not even have time to speak or think. It was either settle or enter into a lawsuit or get out some other way. I read it over and said, "Let it go." I let Mr. Pierce come up to me and signed this statement with that acknowledgment in it before witnesses and I let Mr. Pierce simply bluff me into it. I wanted to keep out of litigation as I did not have the money to carry it on; I had to look out for my own affairs, I signed it whether it was true or not, I was willing to sign an untruth in order to keep out of court because there are a lot of things I have to take; I have not got the money to pay an attorney. I was not substituting Ko-Nut for Coca-Cola and never had done it. I guess samples were obtained of what I was selling, I have had people come in and call for pints and half-pints. If people called for Coca-Cola I served them Coca-Cola, if I waited on them. My boys I do not know, I presume they did what I told them. Coca-Cola is pretty well advertised. I do not believe I have ever been to a place where it is not well advertised, and always has been a demand for it. There is more demand for dope now than Coca-Cola. My trade down there is right around two theatres where there was a good many transfer people, stage hands and [804] that class of people who always—when they get paid off, they come around and say, "Give me a dope"—"Shoot me in the arm"—"Give me a little of this"—something like that, and they always say, "Give me some

(Deposition of C. P. Embrey.)

more of that," and so our trade is not so very discriminating. I get down a drink out of any cola product and the men most generally like anything I am serving. About this statement and conversation with Mr. Pierce, I knew the general contents but I did not know the particular wording. I read it hurriedly with the intent to get rid of it so as to go out home to my meal; they were calling me and I thought it was best to sign it than to be brought into litigation. He came in and said, "I am a special representative of the Coca-Cola Company." I said, "How-de-do?" He comes up to me that way, with a little grip, and he pulls out some papers and he says, "I want to talk to you back somewhere, where I can talk to you secretly." He seemed to think I was a criminal. Mr. Bogart did not know anything about it. In our store we try to keep it all wide open, everything so everybody can see, and Mr. Pierce had what looked like a yellow slip I think, or a tabulated copy from a type-writing record, from the Atlanta office, I think you have it there. It was a bill of lading; and he had those bills of ladings that he had got copies of, and then he says, "We see you have been buying Ko-Nut from Hagan and Dodd, and you have not bought as much Coca-Cola from Fritts & Weil, and we want you to quit selling Ko-Nut. He told me if I would agree not to sell Ko-Nut or nothing—it is in that manuscript from which you read just now—if I would not sell any other drinks or any similar drinks or any other kind of drink like Coca-Cola

(Deposition of C. P. Embrey.)

they would not proceed against me, they said, for substituting for Coca-Cola. And then I told him, I said, "I want to know Mr. Pierce if I sign this agreement, will there be any litigation against me"? He said, "I assure you there will not be, Mr. Embrey." I said, "I will order another barrel of Coca-Cola right now," and I telephoned them to send me another barrel of Coca-Cola. That is all I can recall. [805] He had a bag of papers there, reports of employees who purchased a sample of stuff. ("Plaintiff's Exhibit 1, February 12th, 1912, in the testimony of C. P. Embrey presented.) I do not remember this paper, he may have used this at the time he came in there to see me, I do not believe I remember of seeing that paper about buying Coca-Cola syrup in my house. I don't believe he discussed with me the question of having bought some syrup at my place of business. I do not remember this paper marked Complainant's Exhibit No. 11. It is possible that I have seen those papers before, I cannot recall that to my recollection right now. This looks to me like a record of some one buying stuff for me or my fountain and says how it was dispensed and what went with it but I do not remember seeing this paper before. Mr. Pierce might have at the time shown me this paper. It might have been in the bunch of papers he had. He accused me of substituting for Coca-Cola in his other transaction. He did not substantiate that my place of business had probably made a mistake or error. The possibility that I had made

(Deposition of C. P. Embrey.)

a mistake did not have anything to do with it at all. I had a similar case some time ago where a woman slipped up on the floor at my fountain. I went to Mr. Preston at the bank and asked him what I had better do. He said, "Embrey, she wants \$50.00. It will cost you \$50 or \$75 or \$100 to buy an attorney. You go and pay that woman and take a receipt in full." That was the same principle that I had practiced prior to this, and I thought that was the best way we could keep out of litigation. I believe it is cheapest to confess that I have done wrong than to have litigation. Mr. Pierce did not ask for money but he intimated litigation. He said if I did not stop substituting he would institute litigation, and sign that agreement that I did not have anything else in my store. I would have confessed to any condition rather than go into litigation. I put simple syrup in Coca-Cola and sold it as Coca-Cola. I only had one container and that contained Coca-Cola and when a man asked for a dope I gave him a drink out of that container. [806] My boys may have made a mistake. There is no question about the drinks being of the same color and taste, and I cannot tell the difference. The only reason I signed that statement was that I did not want any litigation, not that I confessed myself guilty. Mr. Mr. Pierce at the time of that interview read to me from reports; I do not remember reading them—there was a great bunch of papers there. Mr. Pierce read me some typewritten matter, but as I said at the time he came up and I

(Deposition of C. P. Embrey.)

thought more of his remark of the Coca-Cola's people litigation and I said, "Well, just go ahead and I will sign up this agreement and sell your Coca-Cola. It will be all the same to me." I did not want to get into any litigation whether it was mine or anyone else's. I am in this litigation at the request of Mr. Littleton. I told him I did not want to come, I did not want to get mixed up in it, because my time is required at the store and with my other affairs; I do not want to go on any witness-stand where you are gruelled by the attorneys. I would have been subpoenaed if I had not come. He did not tell me that—I knew I would. Mr. Littleton asked me to tell the truth, that was all he wanted. I thought he told me that they wanted to take my deposition up here on some matter, and at the time Mr. Pierce was there he told me that.

Q. 396. Is this true or not that I read you? "Will advise that C. P. Embrey is one of our good customers, however, we are sorry to say that he had not been buying Coca-Cola from us in such quantities as he should. Last year he bought from us one barrel of forty gallons, this year he has bought one ten gallon keg, same delivered to him under date of August 4th. We think you will find that this party does not purchase from your other distributors here. We feel that if you would put the matter up to him in the right manner he would see the error of his way. We trust you can see our position in this matter."

A. It might have been so. I do not know whether

(Deposition of C. P. Embrey.)

I bought any from Morris in St. Louis or not, or from the Brock Candy Company of [807] Chattanooga. I cannot remember whether I did or not.

Q. 401. Is this true "Replying to your favor of the 16th will say we have not sold Mr. Embrey any Coca-Cola in over two years; we do not know where he is buying, but think from Fritts and Wehl Company, as it is our understanding, signed up with them, although we are not positive about this."

That is the Brook Candy Company. So far as I remember, that is true, I have not looked at the letter. "We are in receipt of your favor of the 5th, and will advise that we have made delivery of two barrels of Coca-Cola to C. P. Embrey since January 9th, the total of which is 81 gallons." That is Fritts and Wehl, dated May 6th, 1914. I have no reason to doubt it, I was handling at that time Ko-Nut, Koke and Coca-Cola. Up to August 4th I had only bought ten gallons of Coca-Cola. I take that statement as being true. The litigation that I remember now is the different people trying to find out from litigation whether the Coca-Cola Company has the right to sell drinks of that character and without competition. There was one in Nashville, if I remember, the Nashville Beverage Company. The Coca-Cola Company against the Nashville Syrup Company, I think so, I got that information somewhere. That was litigation to keep them from serving the same syrup. I got my idea of dope from litigation concerning the injurious effect. I refer to the case brought in Chattanooga, the Gov-

(Deposition of C. P. Embrey.)

ernment case. That was over Coca-Cola. I was serving these three drinks, I only had one container in the fountain for Coca-Cola and two dispensing bottles. I got my Coca-Cola syrup in red barrels, I think. We did mix Coca-Cola for awhile with simple syrup. We did that, as a matter of economy, and I think then for my taste it was too sweet, and if it was too sweet, it would not be economical to do so, so we quit. We did it for two reasons, for economy and to get it to suit the taste also. I do not know how long I had Coca-Cola in that container in the fountain. There are some things I do not have to look after around the fountain, I am around there two or three times a day when I go and get a drink. I am the prescriptionist. [808] There are several hours of the day I am not in the store, I am back filling prescriptions or out of the store. I do not know whether they are serving Coca-Cola out of that container in the fountain when Dope is called for or not, but I know they are going against my instructions if they do. I never served it myself out of that container in response to calls for Dope. I always serve Ko-Nut or Koke in response to calls for Koke or Dope, since I have had them. I have had Koke on hand since somewhere around two years ago. Some representatives from the local concern sold Koke to me. He just said, "We are going to put in a new cola drink, Koke, and sell it to you for a dollar a gallon, a home enterprise," and he showed me—he said everybody else is buying it, and went on and showed me a list of orders, and said, "It is a

(Deposition of C. P. Embrey.)

good drink, taste some of it and try it; if you like it, buy some more." When he came in I was waiting on someone; I do not know what I was doing, exactly. I was standing in the middle of the store, and he said, "Say, come up here Embrey, I want to sell you some syrup." I came up and tasted it. He said, "That is made by the Koke Company of America." He said, "It is a local enterprise; try some of it." I said, "well." He said, "There is a fine proposition," and showed me a lot of retail orders of retail stores, men that have been in business some time, and about things of that kind, frequently that is my index to purchasing—seeing the orders of people who know more about the business than I do, who have had longer experience. I said, "Well, send me some down and I will try it." I told him it tasted good. He said, "Shall I put down a barrel?" and I said, "No, put down a little and I will try it." My recollection is that was about all that was said. Nothing was said about Coça-Cola, Ko-Nut, Koke or Dope. I do not remember any statement he made to me other than that. I have had calls for Koke. I gave them what I had. Prior to the time I had Ko-Nut and Afri-Cola, I had calls for Koke. I give them Coca-Cola. That was what I understood they wanted at that time. Koke and Dope [809] do not mean anything particular since the low-priced drinks have come on the market. I do not sell Coca-Cola now in response to either call, and if Coca-Cola was the same price as these others I would sell it in response to orders for Koke or Dope.

(Deposition of C. P. Embrey.)

Redirect Examination.

There was a time when I handled Coca-Cola exclusively. When I began to handle these other cola beverages I had different containers for the three beverages I handled.

Mr. HIRSCH.—I object to that; he did not testify that. It is a leading question.

Exception overruled and appeal prayed and granted.

I misunderstood his question. I did not mean to say that at the time I handled Ko-Nut, Koke and Coca-Cola that I put all three of these drinks in the same jar or container. I had heard, at the time Mr. Pierce came and called on me, of the suits brought by the Coca-Cola Company against other druggists handling competing drinks to Coca-Cola. I had heard of the Coca-Cola's system of detectives.

Recross-examination.

Just after Mr. Pierce came into my store I went to see Mr. E. B. Miller. He is the attorney who represented the Government. I thought he would be better posted on those things than anyone else I could go to. I asked Mr. Miller what about it. "Well," he says, "If you serve those drinks, Coca-Cola and Ko-Nut and those other drinks, there ought not to be any suit against you. If you want to handle a preparation that gives you more profit," he said, "Whenever Atlanta Coca-Cola is called for, dispense to them Atlanta Coca-Cola," and, he said, "whenever you have a call for any of those other

/(Deposition of C. P. Embrey.)

drinks, give them that, if you have calls for Koke or Dope, or any of these other cola drinks, you serve them the ones that pay the best profit, or the ones they are calling for. If you want to serve it you have a right to serve either one if you want to when you do not have a [810] call for Atlanta Coca-Cola." I said that I had a jar in the soda-fountain, the one that had Coca-Cola made in Atlanta, in that one, and I put these other drinks in dispensing bottles, labeled by their respective names. I think that was the proper and legitimate way to handle them, so I could get my profit out of the others and at the same time not substitute on the people. I changed the system after my conference with Mr. Miller because I had more drinks and I thought a little more distinction should be made. Before that some were sitting in one place and some in another, but they were not labeled and were not carried on in the way I thought they ought to be. I could not tell them apart, and I wanted to get the boys so they would not serve Coca-Cola when the other was called for and the other when Coca-Cola was called for, and if he got the sample of it, it would be sure to be sample of Coca-Cola when he called for it. I changed the system to avoid the possibility of substituting. You see a boy would not be as discriminating as a man and it may be that they did substitute.

Deposition of C. H. Crimm, for Defendants.

C. H. CRIMM.

Direct Examination.

Have resided in Chattanooga, Tennessee; lived here two years. Before I came here I lived in Denver, Colorado, Birmingham and Atlanta. I am manager for the Germania Life Insurance Company of New York, for East and Middle Tennessee. I have held that position since I have been here, two years. Prior to that time I was engaged in life insurance business. I know Mrs. J. S. Pemberton, the wife of J. S. Pemberton just slightly. I witnessed a certificate signed by her. (Q. 11.) I will ask you to look at that top certificate there and state whether or not you witnessed a certificate containing the substance of that?

Mr. HIRSCH.—We object to that on the ground that it is incompetent evidence. We object to the testimony here and contained in the card presented to the gentlemen as incompetent testimony and hearsay. We object further on the ground that the card should not have been introduced in evidence nor any testimony about it [811] introduced until the original is produced; and if the original is produced we object on the ground that it is incompetent as we have not had the right to cross-examine the party that made the affidavit. The whole thing is entirely immaterial.

Objection overruled and appeal prayed and granted.

(Deposition of C. H. Crimm.)

I do not exactly remember the substance of that certificate, but if I could see the original—I just witnessed the signing of it. Mrs. J. S. Pemberton signed the certificate about 1889, in Atlanta, Georgia, in the old Norcross building.

Mr. HIRSCH.—We object to all this testimony for the same reason and on the additional reason that this gentleman says he does not remember what was in the affidavit.

Objection overruled; appeal prayed and granted.

(Q. 16.) Do you remember the general trend of the affidavit, what it purported to state?

Mr. HIRSCH.—We make the same objection as heretofore.

Objection overruled and appeal prayed and granted.

It was along the line that they were associated in business. Mrs. Mayfield was associated in business with her husband when they manufactured a beverage there several years ago—along that line. I know that much.

Mr. HIRSCH.—We object to that as hearsay, and as being incompetent evidence as to what the affidavit stated, because the affidavit itself would be incompetent evidence, and because he is quoting from what he saw in the affidavit, the affidavit being the best evidence of what was in it; and in the second place, the affidavit if produced would be incompetent. We object to questions and answers on the same ground.

Exceptions overruled and appeal prayed and granted.

(Deposition of C. H. Crimm.)

(Q. 18.) Do you remember the name of the beverage that she states in that certificate that her husband and J. C. Mayfield have been manufacturing? [812]

Mr. HIRSCH.—The same objection to question and answer. Same ruling.

Coca-Cola. I don't know what became of the original certificate. I do not know what became of the gentleman who signed there as Notary Public, Mr. Fred W. Burrese. He was a young lawyer there in Atlanta. I do not *know became* of Mrs. J. S. Pemberton. I know Mr. J. C. Mayfield very well, indeed. I first knew him in Atlanta. I met him in 1897. At that time he was manufacturing drinks, Wine of Cocoa and this other stuff that he had there, and he was in the real estate business, and had his office in the Norcross Building. I think he had two drinks besides the Wine of Cocoa, but I am not positive. That Wine of Cocoa was a drink something similar to the Coca-Cola. It was a syrup that he was manufacturing. That other drink I spoke of was a similar drink but different in flavor. I tasted those drinks. The other drink, I cannot remember the name of it. There was not much difference in taste. I could not say exactly how it tasted compared with Koke, this drink made by Mayfield today. It was similar. It has been since 1897 or 1898, I could not exactly recall the taste definitely, but I know it was a drink just like it. I know that much. The color of those two drinks at that time was brown, light brown, similar to the color of Coca-Cola. I went down to his place of business while he was

(Deposition of C. H. Crimm.)

there. I noticed barrels and kegs in his place of business. The color of those barrels and kegs was red, dark red. I knew Mr. Mayfield in Birmingham about nine or ten years ago. He was engaged in the same business there, manufacturing drinks. At that time he was manufacturing a drink called Koke and something else, I don't know what it was, something like that too. I went down to his business while there a number of times. I noticed barrels and kegs there, they were red, same color as those he had in Atlanta. I remember seeing labels around there, but whether they were on the barrels or not, I could not say. I do not exactly know what was on those labels. I do not remember whether I saw any [813] labels that had the word Koke on them. I has been some time since. He called this drink Koke, and I remember him asking me to take a drink and bringing it out there to me several times. The taste of that drink was the same as the one he has been making in Atlanta. I have known him from then up to the present time. He has been in the same business all along.

Cross-examination.

Mr. HIRSCH.—The first thing we want to do is to move to strike all the evidence, both questions and answers pertaining to the affidavit except that part in which the witness states he was a witness thereto, all evidence pertaining to the contents of the affidavit, and the affidavit itself on the ground that same is incompetent evidence.

(Deposition of C. H. Crimm.)

I lived in Denver a couple of years about. Immediately prior to coming to Chattanooga I lived at Omaha. I lived at the Grand Hotel in Council Bluffs but I did business over in Omaha. I didn't come south at all, into this part of the country during the time I was living there. I lived in Council Bluffs about a year. I was in Denver before that. I never came into this part of the country while I was out there. Immediately before going to Denver I was in Birmingham. I was in Birmingham four or five years. During the time I was out West I saw J. C. Mayfield's son out there. The son's initials are the same as that of the old man, his son, J. C. and he was in the same business out in Denver. Selling the same stuff Koke, out in Denver. He had an office down on some street, I cannot remember the street, back of the hotel, I cannot remember that either. Before going to Birmingham I was in Atlanta. Atlanta was my headquarters. I was in Atlanta seven or eight years, in fact, I was in Atlanta in 1897. You can figure those up. I may not have them correctly, but I went there in 1897 and made my headquarters. Prior to that time I lived in Lexington, Kentucky. I was born there and lived there up to the time I came to Atlanta. I was in the life insurance [814] and I rented an office right next to his in the Norcross Building at the corner where the Fourth National Bank is now. I met him that way, being right together you might say, in the same office. I did not know Mr. Mayfield before 1897, or know anything about him at all or what he

(Deposition of C. H. Crimm.)

was doing. I met him in 1897, I think it was in August, or September, along about that time. Mr. Mayfield at that time had his office there at that place in the Norcross Building, and he opened up a place down on the corner of Forsyth and Trinity, that must have been the street, down there next to the bridge—four or five blocks from the bridge. There he manufactured syrup. I could not say who he was with. I knew him personally and very intimately. I did not know any of his family, I think he was married, I never met his wife. He was at that time manufacturing a drink called Wine of Cocoa as one of his drinks. I saw the name there in one of his offices, on his letterhead I suppose. I am not certain what else was on his letterheads, I do not know whether Pemberton Medicine Company was on it or not. I remember Wine of Cocoa was on the letterhead. I remember that name because it was peculiarly written, and that is the only thing I remember. I have seen him manufacturing syrup, seen him at it. I have seen him manufacture it in that place on Forsyth Street, somewhere in those three or four blocks. He had a negro there helping him. He had an office in the Norcross Building at the same time in the real estate business. A man named Eley, Tom Eley was in partnership with him in the real estate business with him. I do not think he was in the manufacturing business with him. There were two other drinks besides this Wine of Cocoa, I do not remember anything about them. He was in Birmingham and there were other drinks there. I do

(Deposition of C. H. Crimm.)

not remember seeing any other drinks around there except the Wine of Cocoa. I was about his place frequently, a number of times. He made up two other drinks, similar kinds of drinks. They looked the same, I was not much of a drinker of that kind of drinks. I have seen them sold around at places where you get drinks, in other words there were two soft drinks besides the Wine of Cocoa. The only [815] containers I ever saw him use for these drinks, had the seal on it. The only one I ever saw sold was Koke. I do not remember seeing it in Atlanta, I do not remember seeing the labels of it. The first time I ever saw any labels of Koke was in Birmingham, Alabama, some nine or ten years ago, that was the first time I remember seeing it. I saw some things around in his office, just labels, I think the word Koke was on them. Celery Cola. He had at that time manufactured a drink of that kind. I do not remember exactly what they were printed on. I know I have seen the name Koke. I do not think I saw the name Celery-Koke there. I did not know at that time whether Mr. Mayfield and his associates were manufacturing a drink they called Celery-Cola at that time; I know somebody had. I am not sure if he made the drink. About that time I know he had the barrels in there, kegs and such as that. I cannot say whether I ever saw Koke on a keg or barrel or not, but I have seen it on packages, on bottles, and I have seen it pasted on something time and again. I had been intimate in a way; I did not associate with him every day; I did not see him every

(Deposition of C. H. Crimm.)

day. I saw him probably once a month, something like that, and would go into his place of business, drop in there, just as anybody would having an acquaintance and in passing that part of town, his place of business in Birmingham, Alabama, where the old depot is. When I went to Birmingham, I called on him, in the course of my business. I went around there once a month probably, pretty regularly, sometimes not that often. I could not say how often I did go there; I did not go any more than that. I saw him manufacturing a drink called Koke and something else, I do not remember the name. I do not know whether it was Celery-Cola or not. I know he manufactured Celery-Cola at some time, but whether he manufactured it there then or not I do not know. I think Mr. Mayfield left Atlanta before I did. I do not know what became of his business. I do not know whether Mr. Mayfield was manufacturing a drink called Yum-Yum or not. This was a manufacturing plant. I [816] do not think he bottled his syrup, it was manufacturing syrup. This business at Birmingham was both manufacturing and bottling. I do not know who Mr. Mayfield's wife was at that time. I did not know anyone connected with the family except Mr. Mayfield. I never met his wife. I know nobody connected with that place of business with Mr. Mayfield at that time except Mr. Eley. That firm was known as Eley and Mayfield, the real estate firm. Mr. Eley was connected with the Hollywood cemetery as secretary and treasurer. I think they promoted it. I did not know about the company

(Deposition of C. H. Crimm.)

known as the Guaranty Bond and Savings Company. I do not recall how long Mr. Mayfield stayed in Atlanta after I met him in 1897. My business was such I was in and out of there. I saw him there in 1899. I do not know whether he was living there or not. I would meet him down town, pass a few words with him. I do not know when he gave up his office in Atlanta that was next to mine, because I could not stay in that office very long myself. I do not think he went direct from Atlanta to Birmingham. I went to Birmingham nine or ten years ago; Mr. Mayfield was there at that time. I was in and out of Atlanta as late as 1901; I made my headquarters there. I saw Mr. Mayfield there in 1901. I seen him about there. I am very sure about that. I knew nothing concerning the firm Heabley and Harris. I did not know one W. R. Harris. I may have met him casually, but I do not remember him. Mr. Mayfield was in Birmingham all the time I was there. So far as I know, he was in business all the time I was there; I think it was the same place; I am not sure of that. The last year I was there I did not go around there much, I do not think, because I was not in town all the time; I was in town very little. I cannot say what the name of the concern was he was doing business under in Birmingham. I have seen the name J. C. Mayfield Manufacturing Company, but whether I saw it in Birmingham or not I do not know. He was doing business in Denver, I do not know what name it was under. I recall the name of J. C. Mayfield Manufacturing Company. This product he was

(Deposition of C. H. Crimm.)

manufacturing [817] was sold in a syrup or extract, I do not know which. At one time I know he put it out in small packages in concentrated form, whether that was in Atlanta or Birmingham, I do not know, but I know he talked about it, and I know he sold it in concentrated form at that time. I do not know whether it was Birmingham or Atlanta, it was one of the two places. I do not know whether he sold Wine of Cocoa in the syrup or extract form. I know it was bottled, though, in a bottle something like that he used (witness indicates Defendants' Exhibits numbers One and Two), in Atlanta.

Mr. LITTLETON.—Show in the record he is pointing to Defendants' Exhibit Number One.

He had a crown something like that, it was put on with one of those machines, I saw him doing that, that was in Birmingham. I do not know what was on the crown. I lived in Atlanta some seven or eight years and met Mr. Mayfield in 1897 when I first arrived there. I cannot tell you how long Mr. Mayfield remained in Atlanta after I arrived there. I know I would see him at Atlanta every time I got to town. I would always see him and he was one of the first men I saw when I got to Birmingham. I do not remember about that product Koke in Atlanta; I heard of it in Birmingham along nine or ten years ago.

Deposition of W. F. Strickland, for Defendants.**W. F. STRICKLAND.****Direct Examination.**

W. F. Strickland; my residence is Chattanooga; I am twenty-six years of age and am not in any business at all now. I have been in business but have none at all just now. I was in the near-beer business—that is what it is supposed to be. I have handled soft drinks of several kinds. We handled Koke, Maud Muller, that is a dope, and we used to handle Zimmerman's stuff, Dope, I believe it was; also handled Coca-Cola. The color of these different cola drinks so far as I can see are about the same; they are all black-looking. I have drank some; have never drank it by itself; I have always drank it with something else—drank it in a highball sometimes. These drinks are put up in bottles, the general size, shape and appearance of the Maud Muller [818] bottle and this Zimmerman stuff I spoke of as compared with the size, shape and general appearance of Coca-Cola bottles, all look about alike; sometimes the bottles will blow their names around the top, but most of the Maud Muller bottles are about the same size. When customers ask for dope I give them the first thing I get hold of in a soft drink box. Maud Muller, Dope or Koke, everyone I give the first one I get hold of; it does not make any difference, I keep them all in one box, Koke, Coca-Cola, separate. If a man asks for Coca-Cola I give him Coca-Cola if I have got it; if I have not got

(Deposition of W. F. Strickland.)

it I tell him I have not got it. Koke cost me seventy cents for two dozen bottles. Zimmerman's stuff sixty cents a case, but I have not bought any lately; I do not know what it is now. Maud Muller cost me sixty cents, if I am not mistaken. Coca-Cola cost me seventy cents a case. If a man asks for a Dope or Koke, I give him either one I get hold of, or if he asks for Coca-Cola, I give him Coca-Cola. If I am out of Coca-Cola, I tell him I am out, and he will have to take something else. When a customer comes in and asks for a Dope, I take it for granted that he wants Dope and does not care what it is, just so it is something cold. Some cold, soft drink. If he says to me to give him a Dope or a soft drink I give him whatever I get hold of first. It don't make any difference. I keep it all except Coca-Cola in one box. I just keep a few bottles of each kind, and which ever I get hold of first I give to him. Some of the bottles have a name in them, like Chattanooga Bottling Company, but you have to get up close to read them. They are all the same size, and some might look like a Coca-Cola bottle. The Coca-Cola bottle has Coca-Cola Bottling Company on it. I believe it has on the bottom, *Trade-Mark registered*, or something like that, great big Coca, and another big C and the rest of the letters small. If they ask for the bottle I will show them. Some people want it out of the bottle. They will take it up and look at it, some people do and want Dope, and some people call for Maud Muller, and some say give me a "Koke." Some says [819] that—some says Coca-

(Deposition of W. F. Strickland.)

Cola, which ever they call for, I try to give it to them, if I have not got it, I will tell them I have not got it. When people come in and call for Koke, they want Koke I suppose. Other drinks that I know of are Tru-Cola, Ala-Cola. I have been in the business about two years.

Cross-examination.

I paid about sixty cents for Koke. I give seventy cents for Coca-Cola, and pay sixty cents for Koke. I have known of this product Koke ever since they put it out, something over a year ago. I had calls for dope, a soft drink of some kind, but I did not hear about that Koke before I got it. Some men would come in and say "Give me a Koke, Coca-Cola, Dope or something." That Zimmerman stuff, I believe Dope is the name of it, I am not sure, I don't sell any of that. Dope I am almost sure is the name of it, I would not say positively, is made out here on Carter Street, Chattanooga, Boyce Street, rather, Boyce and Hook.

Redirect Examination.

I never seen any drink aside from this Koke that you speak of advertised or labeled by the name of Dope. That Dope that Zimmerman had, if I am not mistaken, just plain dope on the crown. The Chattanooga Bottling Company used to put out something, I believe, Tru-Cola, it was dope drink.

Recross-examination.

Koke it was in the paper, I believe, it was printed. I do not remember but to the best of my knowledge it has been advertised K-O-K-E. I would not say, it

(Deposition of W. F. Strickland.)

has been advertised somewhere, I am sure. When the Bottling Company organized here, the Central Koke Company, if I am not mistaken, the paper said they were going to put out the drink Koke. When it was first organized here, the Koke Company was going to put out the drink Koke, that is to the best of my knowledge. I believe you can find the paper with it in it. That is all I have seen, and I might not have paid it any attention. [820]

Deposition of C. H. Jouett, for Defendants.

C. H. JOUETT.

Direct Examination.

Forty years of age; business druggist; live in St. Elmo a suburb of Chattanooga, Tennessee. I am associated with the Live and Let Live Drug Company. Been with them since April 1, 1914; before that was with the Miller Pharmacy on the corner of Eighth and Georgia Avenue, Chattanooga, Tennessee. At the Miller Pharmacy I was about the fountain frequently and could hear the names people used in asking for drinks they wanted; I occasionally dispensed drinks at the fountain, not often. We handled Coca-Cola, Cola-Nut and Ala-Cola, I think; I don't remember whether we handled any other cola drinks or not. I have known of drinks similar in color, taste and appearance to Coca-Cola I presume for ten or twelve years, probably longer, fifteen years probably. They are alike in color and taste as far as I am able to tell. We got the Ko-Nut in at the Miller Pharmacy in a plain barrel. I don't think it

(Deposition of C. H. Jouett.)

was painted. I may have seen the barrel but I never charged my mind with the kind of barrel it was, or taken any special notice of it. I have been in the drug business since 1896. We used to use other cola drinks. I did not buy them. I do not recollect what the names were. We never substituted those drinks when Coca-Cola was asked for. We always had Coca-Cola and the other drinks both there; have had customers come into the soda-fountain and ask for dope. When they asked for dope, that is left with the dispenser and they give them any cola drink they had. When a customer came into the soda-fountain and asked for a dope I took it he wanted a cola drink. I did not understand he wanted any particular brand of cola drink. I do not regard that word "Dope" as a specific name for any specific brand of cola drinks, and yet I understand there is one cola drink registered under the name of "Dope" too, or at least there is one bottled and on the market under that name. I could not distinguish a glass of Coca-Cola from the other cola drinks that I have known of. I could not tell the difference in color or taste, and personally so far as I am concerned, it would not make any difference so they gave me a cola drink. I never had [821] a customer reject any other cola drink on the ground that it was not Coca-Cola when it was served to him on a request for a dope, or on the ground that it was not what he asked for. At the Miller Pharmacy the syrups of the different drinks they had were kept in dispensing bottles, tanks and pump jars. What I mean, bottles

(Deposition of C. H. Jouett.)

that go down into a counter or fountain and you would have to life the bottle and take the stopper off to pour the syrup out, that was the kind of fountain we had at that time, they were all the same shaped but they were labeled so we would know them, one from the other.

Cross-examination.

I was never a soda dispenser. I have been around the fountain and superintended fountain work and have dispensed more or less soda. At the present I am prescriptionist in the prescription department of the Live and Let Live Drug Store. I had general charge of the business in connection with Mr. Miller, assistant manager of the business. Attended to the prescriptions, too, and waited on the front part when none of the boys were at the fountain I waited on the fountain. There were occasions for me to be at the fountain a good deal of the time. There were two boys, and quite often none of them would be at the fountain waiting on the trade, and I would go, several times a day. I have had a lot of experience. I could dispense soda as well as any man in town; I am not an expert, but I say I can dispense soda as well as any man in town. I have worked with them and have had men to work for me who were expert soda and ice-cream men. I have gained my knowledge from my own experience and observation at the fountain. Cola drinks were similar in color, taste and appearance to Coca-Cola fifteen years ago. I do not recollect, as I said a few minutes ago, the names of the cola drinks, or even to five years ago.

(Deposition of C. H. Jouett.)

I do not know because I didn't bother my mind with it. I think I dispensed it first, to the best of my recollection, it was with the St. Elmo Drug Company. The proprietors there, I think, were Wessenberg and Jones. The best of my recollection it was Ko-Nut. I do not state [822] positively as I do not remember those things. I do not know what the Live and Let Live Drug Company handle. I have been with the Live and Let Live Drug Company since October. I have had no experience in that way there. I was with the Miller Pharmacy I think three and a half years just prior to the time I went with the Live and Let Live Drug Company. This Miller Pharmacy, as I said, handled Ala-Cola, Ko-Nut and Coca-Cola. I presume they were handling it when I went there. Ala-Cola might have been added after I went there, I am not positive about that. They have changed in buying their colas after I went there, that I recollect. I do not know positively, it was there when I left there. They kept Ko-Nut in a barrel, they got it in a barrel. They kept the fountain syrup there with the other syrup in dispensing bottles. The dispensing bottles stay in the fountain. They kept Coca-Cola in the same way, there were no pump tanks to that fountain, they were all kept right there in those containers. I served them out of those containers. I have served Coca-Cola in response to calls for dope. I served a cola drink, sometimes it might be Coca-Cola, when the others were out. As a matter of convenience when I have Ala-Cola, Ko-Nut and

(Deposition of C. H. Jouett.)

Coca-Cola in the jars, I serve either one I feel disposed to. It is like going into a bar-room and asking for a glass of beer; if I do not specifically ask for Hauck's or Budweiser, I get a glass of beer. If I ask for Bud in the bar-room,—they will give me a bottle of Budweiser. If I go into a fountain and ask for a shot, I do not care what he gives me, so long as it is a cola drink. If a customer comes to my store and asks for “a shot” he gets Ko-Nut or Ala-Cola, any cola drink. That has been so at nearly all the places I have been with at fountains. At each fountain where I have been, when they asked for dope, I just gave them any of them, it did not make any difference. I have been the owner of a store at Griffin, Georgia. Not a thing happened to it, it was in 1901, I think, I left Griffin. I sold out the store to the former proprietor, that is, it went into bankruptcy. [823]

Redirect Examination.

When I was at the Miller Pharmacy some gentleman came and said he was the agent of the Coca-Cola Company; I could not say whether or not it was this gentleman here; he said he represented Candler and some law firm in Atlanta, Candler and someone else. He asked for Mr. Miller first time; I think he came in three times; I talked to him, I think, twice; a day or so after the first time he came back and inquired for Mr. Miller again. The last time he was in there he asked for Mr. Miller and I told him he was out. He left his card the last time and said he was stopping at the Patten Hotel and said for Mr. Miller to

(Deposition of C. H. Jouett.)

come over there and see him, that he was representing this law firm and it would be to his interest to come down there and see him, that he was handling other drinks besides cola drinks. He said he understood Mr. Miller was handling other cola drinks aside from Coca-Cola. He just indicated from what he said that it would be to Mr. Miller's interest to come and see him, that he was representing this law firm. He used the word substitute and said, "I understand that he is handling other cola drinks. I do not recollect that he understood they were substituting other cola drinks for Coca-Cola, but Mr. Embrey in the meantime had come up there and told about his experience.

Mr. HIRSCH.—I object to what Mr. Embrey told.

Well he indicated to me, I gathered that the object of his visit was to wind him up in a contract with the Coca-Cola Company, and to force him from handling other cola drinks, if it was possible. From what he stated and from what I had gathered from outside sources.

Mr. HIRSCH.—We object to what he gathered from outside sources and object to conclusions, and move to strike out his answers about the contract.

Objection overruled and appeal prayed and granted.

I do not remember that he saw Mr. Miller. He did not say anything to me about wanting Mr. Miller to sign a contract to handle Coca-Cola exclusively. I do not know that he did, no more than he wanted to wind him up in a contract. [824]

(Deposition of C. H. Jouett.)

Recross-examination.

My recollection of this gentleman who was representing the Coca-Cola Company is that he left a contract in the store, just like every Coca-Cola contract signed with the various firms, the same matter, to agree to sell their drink, to buy Coca-Cola from Fritts and Weihl. If you sign up to buy from a jobber, to buy Coca-Cola, they wind you up in a contract to buy so much Coca-Cola during the year, through some jobber he might name. These bottle containers at Miller's Drug Store, some of them had glass labels on them, and others had porcelain labels, where the bottles, original bottles, had been opened; we had paper labels marked what they were, so we could tell what was in them. Coca-Cola dispensing bottles were marked Coca-Cola. When a person asked for Coca-Cola it was always served out of that container. I do not know what was in the jar labeled Fan-Taz. It may have been different things. It may have been Fan-Taz in it at one time, and it may have been Coca-Cola in it at one time, or Ko-Nut, or Ala-Cola, sometimes, some weeks some months, it might have been one thing and another time there would be another. I do not know whether there was ever any Coca-Cola in the Fan-Taz jar or not; we kept it in a bottle and different ways. I do not think Ko-Nut was in that bottle, or Ala-Cola. I would not say there was ever Coca-Cola in the Fan-Taz jar, nor would I say otherwise. We had a pump-jar there to use for one of the cola syrups. I do not remember what the jar was

(Deposition of C. H. Jouett.)

labeled. Coca-Cola, in my recollection, was kept in a bottle with Coca-Cola marked on it. I do not know whether there was any Coca-Cola in that Fan-Taz jar on or about November 11, 1913. We usually know where we put this Coca-Cola.

Redirect Examination.

I knew what was in those bottles at the time I served drinks out of them. I had no reason why I should change my mind, that I know of, that in the six years that I served drinks what kind of bottle it was served from, nor where the drinks were manufactured. [825]

Recross-examination.

I knew at the time I served but I do not remember now what was in the Fan-Taz bottle. At the time I think there was a cola drink in the Fan-Taz bottle. If I did not know I asked someone at the fountain what was there. I would not know that Coca-Cola was in there if I did not go down to the Coca-Cola barrel and pour the Coca-Cola in it. I never drew Coca-Cola into the Fan-Taz bottle, to my recollection. I could not say now that I did or did not ever draw anything into that bottle. I would feel no scruples at serving any other drink for a call for Dope if doing business for myself. I never was around the Live and Let Live fountain. I was around Miller's fountain; I might go around there once a day or twenty times a day. Sometimes the porter, and the soda-boys put the syrup in the fountain at Miller's. I would ask the porter or soda-boys, they were usually in hearing of the fountain.

(Deposition of C. H. Jouett.)

I never heard customers ask for Ko-Nut, I have heard them ask for Ala-Cola frequently.

Redirect Examination.

We also had Root Beer up there; it is brown or sugar colored; it is not as dark as a cola drink. We also handled sarsaparilla; it is not as dark as the cola drinks; it is something along the same line only it is not as dark; it is dark, but it is so you could detect the difference. We also handled vanilla flavor. Occasionally it would be the color of the natural syrup and again they would put artificial color with it. They usually used the caramel. The color of this vanilla, the color of caramel is not as dark as a cola drink. I never served Root Beer or sarsaparilla or vanilla flavoring by mistake for Coca-Cola or some of the other cola syrups.

Recross-examination.

I do not know the price of Ko-Nut. I think Ala-Cola costs in small quantities about a dollar and a half a gallon, that is my recollection. I did not buy Ala-Cola. Dr. Boyd used to come in the store; Mr. Miller bought Ala-Cola from him; I just heard him price it. He [826] said about one-fifty, it might have been one and a quarter I do not think it was as low as a dollar. I do not know the price, I have not bought any Coca-Cola myself, personally, since I left Griffin.

Deposition of Luke Pogue, for Defendants.

LUKE POGUE.

Direct Examination.

Thirty-one years of age, engaged in the beer business; in that business ten years. During that time have dispensed soft drinks in bottles. I have dispensed a general line of soda-water, red and white, ginger-ale, Digestol, Coca-Cola, Rye-Ola, Gay-Ola, Ala-Cola, Nerve-Ola, Koke and Gay-Nol. Most all coke drinks have the same color. I could not say as to taste, I am not much of a coke drinker. I have known of these other drinks on the market similar to Coca-Cola about ten years. Customers in asking for the different cola drinks ask for a "Dope" or a "shot," or a "sniff," or different things. When they ask for those things I give them most any kind of a coke drink we have on hand; I mean by coke drink, any that is put up in a black bottle, Koke, Gay-Ola, Nerve-Ola, Coca-Cola, these cola drinks. I have customers come in and ask for coke; I serve them just whatever we have on hand, if they do not specify. If they call for "Koke," whichever way you spell it, we give it to them; if we don't have it, we tell them what we have. The same applies to Dope. In dispensing these drinks we just set up a glass and a bottle to them so they can see the bottle. The name Coca-Cola is on the Coca-Cola bottle. Some of the others have names on the bottle and some don't. There is no way for our customers to know when they come and ask for dope the drink

(Deposition of Luke Pogue.)

they are getting without it is Coca-Cola; Coca-Cola uses their own bottles and these other coke companies, most of them use bottles they pick up, almost all of them, and you may get a case with a dozen different names on the bottles; the Coca-Cola bottles have Coca-Cola on them. I never saw Coca-Cola in nothing but a Coca-Cola bottle. When a customer comes into our establishment and asks for a coke, I do not understand that he has made a definite and specific request on me for Coca-Cola and nothing else. Since we have handled Koke, [827] he is asking for Koke. Before we handled it, some koke drink, most any soft drink. In the beer business it is different from the soda business. Take a fellow who drinks beer and whiskey and wants to get on the "water-wagon," he might want Poinsetta and say he is drinking dope, or soda-water, or anything like that is "dope" with him. The word Dope applies to most any soft drink around bars. I have had customers come in and ask for dope when we served Poinsetta. They do not reject it as not being what they called for.

Cross-examination.

Poinsetta is a different color from cola drinks. The first cola drink I knew, I would not be positive, is Rye-Ola, back some eight or ten years, not before I knew Coca-Cola. Coca-Cola first came out more than ten years ago, I could not say positively when I first learned about Gay-Ola. I cannot say about Nerve-Ola either. I do not know which one has been out ten years besides Coca-Cola. I worked ten years

(Deposition of Luke Pogue.)

ago in a bar and it seems to me it was the first cola out, I think the Chattanooga Bottling Works put it out. I am the proprietor at the Patten Hotel. F. M. Catron formerly owned the bar. Before that the Chattanooga Brewing Company. I think Mike O'Grady had an interest in that. Mr. Mike O'Grady is not a stockholder in the Koke Company that I know of. I am not a stockholder of the Koke Company. I own the Patten Hotel bar now, the Chattanooga Brewing Company has no interest whatever in it. I know Mr. O'Grady when I see him. I do not know how long I have known the drink spelled K-o-k-e. I think I have been handling it seven or eight months, we have been handling so many koke drinks I do not pay any attention to them, I think one is about the same as the other.

Deposition of Dr. H. O. Null, for Defendants.

Dr. H. O. NULL.

Direct Examination.

Forty-nine years of age; live in Highland Park on Union Avenue, Chattanooga, Tennessee. My business is practicing medicine, I conduct a drug-store also. I have been a practicing physician about ten years, I guess, here. I have had a drug-store about nine years. [828] I have a soda-fountain in my drug-store, have had it there during all that time. We have the ordinary line of soft drinks. I do not, of course, stay around the fountain any. I only look after the details of the business, occasionally, in case of a rush, anything like that and I am there. I do

(Deposition of Dr. H. O. Null.)

not make a business of dispensing drinks myself. Some call for a little everything now, in the way of drinks. We handle cola drinks, the only cola drinks we have now is Coca-Cola and Ko-Nut. I have handled a number in my time. I have handled Wise-Ola and Luck-Ola at one time, and My-Ola. I have handled Coca-Cola during the time I have had the soda-fountain. We have always handled some other cola drink. We have not handled any line, but some one and sometimes two; in fact, we have had different drinks, I suppose, other cola drinks. The syrup for the different cola drinks come in just ordinary barrels, so far as I have noticed them, all painted red. I do not believe I could tell a Coca-Cola barrel by its color if I did not see the label on the barrel. In fact I do not know that I ever tried to. I do not think I could distinguish it by its color from the barrels in which other syrups have been shipped. I do not think there is any distinction in them. I do not know as I have ever studied the color of these other drinks compared with the color of Coca-Cola, they are all similar, of course there may be a difference in them, I never have studied that feature of them, never have examined them minutely. In a general way they are all similar to each other. The taste of these different cola drinks compared with the taste of Coca-Cola, is very similar, there is some difference in it. I notice myself, I drink Coca-Cola sometimes, in fact most any of them, but I can notice a difference in the taste of them, some of them, not minutely, in a general way there is some difference, which probably would not be

(Deposition of Dr. H. O. Null.)

perceptible to the trade, but there is some difference in the taste of them. We keep the Coca-Cola in a tank with a Coca-Cola label, labeled "Coca-Cola" and the other drinks we have no regular label for them, but the fountain has a regular porcelain label for the Coca-Cola [829] jar, and the others we change sometimes, Ko-Nut sometimes, and Dope whichever we have, most generally they call it "Dope" and put a paper label on that, we keep a label on it. My customers use a good many different names, now, I do not know whether it is particularly these cola drinks or not, but they come in and call for "Dope" and "Koke" and "Shot," and "Give me a dose of lead," and everything else, when they use these names I believe it is generally known they want a cola drink. When a man comes into my soda-fountain, a customer, and asks for a Dope or a Koke, I do not understand that he had made a definite and specific request for Coca-Cola exclusively. He has not asked for Coca-Cola. When customers come and ask for "Dope," "Koke" or "Shot in the arm," I serve what we have, if we have Coca-Cola, if we have Ko-Nut, we give them either one of them, or both, if they ask for one and we happen to be short of one at the fountain, we give the others, what we have, when they ask for dope or koke or something like that. I regard the names koke and dope as nicknames for cola beverages as a class. They were just names people have picked up for that class of drinks, that has always been my diagnosis of that class of drinks. I have never had any of my customers refuse any of my cola drinks

(Deposition of Dr. H. O. Null.)

that I have served in response to requests for koke or dope, shot or lead, or anything of that sort, on the ground that it was not what they asked for.

Cross-examination.

I have been handling Coca-Cola at my place of business I presume probably about eight years. I was not carrying Ko-Nut at that time. I don't suppose I have sold Ko-Nut probably more than a year or two. I carried Wise-Ola a number of years ago, probably six years since I carried that. I carried Ala-Cola a little while, I suppose that has been probably three years as well as I can recollect. My-Ola, I carried that about the same time as Ala-Cola. Coca-Cola was the first, when we first opened the fountain. When I first went out there, in fact, there was no business there, the first two years I [830] guess, the fountain was there it was perfectly dead. We did not sell anything, we were out in the "sticks" and did not really pay its way. I did not pay much attention to it at any time I was carrying Coca-Cola by itself, only in the last year or so you might say we paid much attention to these other drinks. Ko-Nut, I think, is a dollar and ten cents a gallon. Wise-Ola, I believe, is about the same, and Ala-Cola, I believe, that was more as well as I can remember. My-Ola I do not remember. I carried Wise-Ola longer than the rest, the others, I think, I had a small keg, maybe twenty gallons of each one. For Coca-Cola I have been paying a dollar sixty-five and a dollar seventy-five. There are many calls for Ko-Nut at my fountain, we

(Deposition of Dr. H. O. Null.)

have quite a trade on it, we use it for both Ko-Nut and for Dope. When we first handled Ko-Nut we advertised it. We put on our fountain, "Drink Ko-Nut." I have never seen it advertised that I know of. I think Wise-Ola was the same way, the Wise-Ola people, they did give us an advertising campaign. I did not use it much, it extended over a period of twelve months, something like that, I expect, when they first introduced it here. My-Ola and Ala-Cola we did not serve but a little bit. We have a container marked Dope, we marked it Dope and put Ko-Nut in that and kept that separate. We keep Coca-Cola in a separate container. When a person asks for dope we serve him either one. When any of those names, koke, or dope, or anything of that sort are called for, we give them either one. Our fountain was located at Ridge Junction, about two miles from the center of town. I handled Coca-Cola alone about the first year or probably a year and a half, in fact we did not have any great fountain trade at that time, it was very little at first, more of an experiment, we were out there in the "sticks" and nothing there. I believe I could tell the difference between the taste of Ko-Nut and Coca-Cola. I expect a man who is in the habit of drinking Coca-Cola would know it very perceptibly. So far as myself is concerned, I do not see much Coca-Cola advertising. I go out of Chattanooga very little. I see lots of Coca-Cola signs on [831] the windows, I would call that advertising. I have no signs on my windows or

(Deposition of Dr. H. O. Null.)

fountain. We do not keep them regular, we keep signs on our fountain at times. We make runs, we advertise different drinks at times, we will put up this week one, and probably next week something else.

Redirect Examination.

Our store is now in the city, the city has built up out there. Our soda-fountain has developed, yet during the winter we do not do but very little, although we are in the city, at the fountain we do very little, but in the summer time and as soon as spring opens up we have a nice trade, you might say from the first of November into the first of March or April we do not have much trade at any time.

Recross-examination.

Our business has grown in proportion as the population has grown around us, I mean in the summer season.

Deposition of J. C. McDonald, for Defendants.

J. C. McDONALD.

Direct Examination.

Thirty-eight years old; live in Chattanooga, Tennessee; lived here since 1889. Engaged in the near-beer business now for myself about six or eight weeks, but I have been tending bar for about five years. Place of business located in the Arcade Alley in Chattanooga. I handle soft drinks in my business. I have Coca-Cola, Sinalco, Poinsetta. I did handle Coca-Cola but not since I have been in business for myself, that has been six or eight weeks.

(Deposition of J. C. McDonald.)

I have got Koke since I have been in business here, when in business with other people we had Coca-Cola for a while. We had Ala-Cola, Maud Muller, Tru-Cola. The color of those drinks compared with Coca-Cola are practically the same things, I could not see any difference in them; no one could see any difference at all. I could not see any difference in the taste compared to Coca-Cola. The drinks I handle are put up in bottles, they are pretty near the same as Coca-Cola bottles, the same general appearance. From its general appearance at a distance I could not tell one from the other. I would not know a glass of Coca-Cola by its color and could [832] not distinguish it from any other similar drink. I could not distinguish a glass of Coca-Cola by its taste from the other cola drinks I have handled. I have known other cola drinks on the market similar to Coca-Cola since I have been tending bar, about five years. I have never seen a cola drink not practically the same color as Coca-Cola and practically the same taste or that was not put up in a bottle of the same general design as the Coca-Cola bottle. I have never seen any Coca-Cola barrels being delivered to soda-fountains around town. I would not know a Coca-Cola barrel if I saw it, I never saw one that I know of. I have customers come into our place of business and ask for dope. When they ask for dope I give them anything I have got in the line of a cola drink. I understand when they call for a dope, no particular brand unless they call for the particular brand. I never had a customer refuse

(Deposition of J. C. McDonald.)

any of the other cola drinks we have dispensed, other than Coca-Cola, when he asked for it as dope, on the ground it was not what he asked for. I have recently seen advertising of Koke, little square signs. I have known the product Koke, I presume, three or four or five months, I could not say exactly. I get Koke from the Chattanooga Bottling Company. Customers do not come and ask for a cola drink by any other name besides those I have mentioned, they say Koke, Dope, sometimes Shot, something like that. I understand they want anything in the cola line and I give them what I have got. I do not consider the name Koke or the name Dope is a specific and definite name for Coca-Cola and no other drink.

Cross-examination.

I have known and handled Koke the last few months. I have known of Coca-Cola ever since I was tending bar, I handled Coca-Cola before Koke came on the market. I most always handled some other drink along with Coca-Cola. I would not give a man a lemon soda if he asked for a dope or a sarsaparilla. I never handled Root Beer. I would not give a man a lemon soda for a Dope drink. I would not say sarsaparilla, I never handled that, I do not know whether they would want that. I put up some Koke advertising, I had two or three signs [833] down at my place. I never saw that advertising anywhere else. (Exhibit 1 to the testimony of Henry Boerger.) That sign had on its *Koks* similar to the way Koke is on this crown. The first cola drink I knew of besides Coca-Cola was Tru-Cola. I suppose that

(Deposition of J. C. McDonald.)

was three or four years ago. I have known Coca-Cola for a good many years, I suppose, for the last ten or fifteen years probably.

Deposition of F. M. Bogart, for Defendants.

F. M. BOGART.

Direct Examination.

Twenty-seven years old; employed at C. P. Embrey's Drug-store; been there since seven years next July. My duties there is all-around man, prescription clerk, and I keep a few books, wait on the soda-fountain some when the man is out. I went there as prescription clerk. I am about the fountain frequently and can hear calls people make for the different drinks they want. We serve Coca-Cola, Ko-Nut, Afri-Cola and Mays-Ola. The syrups for the different drinks come in barrels, the color of the barrels are red, different shades. Coca-Cola comes in red barrels. I do not know as I could tell a Coca-Cola barrel from the other barrels if I couldn't see the label on it, by its color. They are very much the same in taste to Coca-Cola. In making known to me the different cola drinks they want some say "Give me a Dope," "A shot in the arm," "Shoot me." I understand when they ask for those names they want some stimulating drink. I do not understand that they have made a definite and specific request for Coca-Cola exclusively. I do not think these nick-names specify any certain brand of drink. We give them when they call for those different names, just what we happen to have, My-Ola, Mays-Ola, Ko-Nut.

(Deposition of F. M. Bogart.)

We have had calls at our soda-fountain for Coca-Cola. When customers ask for Coca-Cola we serve them Coca-Cola. We do not serve the other drinks when they ask for Coca-Cola. I have never had any of these cola drinks other than Coca-Cola rejected by a customer on the ground that it is not what he asked for, when served in response to a request for "A dope," or "A shot," or "Shoot me" or anything of that kind.

Cross-examination. [834]

Twenty-eight years old, I was just twenty when I started at Embrey's as prescription clerk. I never was a soda-water dispenser there. I started in the drug business as errand boy, soda-water, etc. I was with Harry Wise at that time. Harry Wise is in the drug business at Fountain Square. He has gone out of business. I was soda dispenser there five or six years. I was not a soda dispenser at Embrey's, but I delivered packages, that was a small store, and I had to do everything, they had a soda-fountain in the store, another man at the soda-fountain and I used to fill in when he was not there, and run errands most of the time. They handled most of the phosphates, sodas and Coca-Cola. Rootbeer also, I guess. Just to be frank with you I do not remember whether I ever heard calls for koke or dope, that is too far back. I knew Coca-Cola. I knew about it when I started as errand boy and possibly a little before that time. When people called for Dope, Shoot me, or Shot in the Arm, I just imagine, they want something to stimulate them, dope.

(Deposition of F. M. Bogart.)

Redirect Examination.

I was in Embrey's drug store about a year ago when a representative of the Coca-Cola company came in. I remember when he called. Mr. Pierce is the gentleman (indicating Mr. Pierce). I did not hear the conversation.

Deposition of W. F. Boylin, for Defendants.

W. F. BOYLIN.

Direct Examination.

Twenty-eight years old, reside 1609 Holly Street, this city; engaged in printing business, been engaged in that business eighteen years in Nashville, my father and myself. The name of our printing concern is the "American Label Works." I know J. C. Mayfield, have known him I should say for twelve or fourteen years. We printed for him soon after he came to Nashville, the first time I knew him was with Diehl and Lord, at least he had his office there in Nashville, Tenn. Then he was manufacturing Celery-Cola, a drink, syrup and extract, he was putting on the market. He called it Celery-Cola. It resembled all these cola drinks, as compared with Coca-Cola, you could not [835] tell the difference. I drank it, they are all similar, about the same to me. We printed labels for Mr. Mayfield. The first we knew of him was when we printed the labels, Celery-Cola labels, while he was with Diehl & Lord. That label was to put on soda-water bottles. We printed a number of other labels for him. Celery-Cola was the first one we printed and we printed a label

(Deposition of W. F. Boylin.)

called "Vigo," and Blue Ginger Ale, we printed Koke labels for him also. The first Koke labels we printed I should say it was eight or ten years ago, something like that. I do not remember the dates positively. The first we printed for him were to paste on jugs and barrels, with this description, "Mayfield's Dope Manufacturing Company, Nashville, Tennessee," and they had a place on it to write the address, I am not sure, I think. He spelled Koke on that label K-o-k-e. It was a fancy K first and the other letters something like it, not exactly a script, but on that order. We printed Dope labels, I think that was after we printed the Koke labels, I should say about 1903 and '04, something like that. They were for soda-water bottles and then we printed, I believe it was a Koke label for barrels the last time. I think he made this Celery-Cola in both ways, because I think we made labels for him where we would state on there to use so much syrup and so many ounces of extract, and then printed them just to go on the syrup also. He put out this syrup or extract in jugs and kegs, five and ten gallon kegs. I think they were painted red, that is my recollection of it. We printed both ways, a beverage and a syrup to send to bottlers where he sold the extract and to put on bottles, and then labels to put on his containers when he shipped it out. This Koke was a cola syrup, a cola drink. The Coca-Cola and Celery-Cola are like all those cola drinks. I couldn't tell any difference from the other cola drinks. I do not think he used anything but red barrels, I never saw any dif-

(Deposition of W. F. Boylin.)

ferent colors, nothing but red barrels. We printed labels for hundred of people for different cola drinks, Haskell's Cola, at Cookeville, North Carolina, and we printed Koke labels for Kelley & [836] Westmore, at Franklin, Kentucky. And we printed Texa-Cola, Call's Cola for some firm in North Carolina. Fletcher's Cola, a Nashville concern. Diehl's Star-Cola for Diehl & Lord of Nashville. Gerst-Cola for Gerst Bottling Works of Nashville, and we printed Heck's Star-Cola for Heck of Nashville. There were so many of them—I can get you a list of them from the office. I have known of Cola drinks on the market other than Coca-Cola practically ever since I can remember, ever since I have been in Nashville anyway, that will be eighteen years the first of January. The color of all these cola drinks I have seen as compared with Coca-Cola are all practically the same color and taste as compared with the taste of Coca-Cola. I have never seen a cola beverage not the same general color. I have never tasted a cola beverage that did not have the same general taste. I have been around soda-fountains or where they sell these cola drinks in bottles and heard some people ask for coke or dope. When I go into a soda-fountain or place where they sell bottled cola drinks or soft drinks in bottles and ask for a dope, I expect to get a cola drink. If I want Celery-Cola, I know I have got to ask for Celery-Cola, or Coca-Cola. If I go in and ask for "A coke" I expect to get any cola drink. I do not regard the names of koke and dope as specific and

(Deposition of W. F. Boylin.)

definite nicknames for Coca-Cola exclusively. I have heard these words koke and dope, for ten or twelve or fourteen years anyway, fifteen years I should say. They mean any drink, any cola drink, I should say. I regard them as nicknames for cola drinks as a class. Out to the baseball park here in the summer time there is no cola drinks sold there except Diehl & Lord's Star-Cola that is sold in bottles. I have heard them ask for it as "coke" and "dope" and I have heard them ask for Coca-Cola, but the boys tell them they do not have Coca-Cola, but Diehl's Cola. They always have signs out there and have crowns on the bottles the boys bring out in the stand with the name on it. When people ask for dope or coke and are served with Star-Cola, I think they know they are getting Star-Cola.

Mr. HIRSCH.—I object to what people think they are getting. [837]

I have heard it asked for as koke or dope, nearly always in calling for a drink out there I saw, "Give me a coke" or "A cola." I do not think I am getting Coca-Cola when they serve it to me. People in asking for a drink at the ball park by the names koke or dope, can tell they are getting Star-Cola and that it is not Coca-Cola by the crown on the bottle and advertising in the park that Diehl & Lord have exclusive rights there to sell Diehl's Star-Cola. Diehl & Lord have their name blown in the bottle, no label on the bottle except the crown. I do not think I have seen cola beverages put in anything except six and seven-ounce split bottles, most all I have ever

(Deposition of W. F. Boylin.)

noticed are dark brown bottles. If I saw a glass of Coca-Cola served at a fountain, I could not distinguish it from any of the other cola beverages I have seen by its color. I could not distinguish it by its taste because I do not drink but very little. People who drink it all the time might, but I could not. I do not know how the people who make these other cola syrups ship their syrup, what color barrel they ship it in. I do not know the color of the Coca-Cola barrel. We never sold the Coca-Cola Company goods at all.

Cross-examination.

Before I came to Nashville, I lived Mount Airy, North Carolina. I knew about the drink Coca-Cola while at Mount Airy; it was on the market then being sold there. I don't know as I ever did ask for a koke or dope at that time. I lived at Mt. Airy, North Carolina, 'bout a year; I was born and raised in Monroe, North Carolina. My father was in the newspaper business at Monroe. I should say I can remember Coca-Cola as far back as I remember. At these places I lived at before I came to Nashville, I never heard of Celery-Cola, or Blue Ribbon Ginger Ale. I could not say positively I ever heard the name Koke, I might have, I had not heard of the product under that name. I could not swear positively what cola drinks were on the market eighteen years ago, except Coca-Cola. The first time I made up labels for Celery-Cola was about twelve or fourteen years ago. I [838] have no way to refresh my memory on that unless I could

(Deposition of W. F. Boylin.)

find those old books where we first charged Mr. Mayfield with them. I do not know whether I can find them or not, because we had a fire and a lot of books were burnt up. It know it must have been fully that long ago because we were in business a little before that time. I think we printed labels for him when he first came to Nashville with Diehl & Lord, twelve or fourteen years ago. I do not think he worked at Diehl's and Lord's, he just made up his syrup there, because they had the plant that he used. The first label for Vigo, for Mr. Mayfield was after he made Celery-Cola labels; I should say that was seven or eight years, or ten years ago. I do not know when Mr. Mayfield first came to Nashville. He got the labels from us twelve or fourteen years ago, if not more, it might have been longer than twelve years, but I do not think it was less than twelve. As soon as we knew him we commenced making up Celery-Cola labels for him. This Blue Ribbon Ginger Ale, considerably after that, I should say, ten years ago we made those labels for him. These Koke labels I spoke about, I will tell you how I am getting my dates. I went to St. Louis, I was over there two years and we made those before I went to St. Louis. I have been back here nine years and that must have been eleven years ago, about eleven years ago we made Koke labels I think to put on packages, shipping out. Jugs and barrels, packages of that kind. We have the cuts to a good many. We have the cuts of Vigo and things of that kind. We have not any cuts of the first Koke label,

(Deposition of W. F. Boylin.)

because that was plain typeset labels, that was just a printed label. We have cuts of labels now, the ones we have there now they were made before I went to St. Louis. We do not make the cuts, we had an artist to draw them and had it made, an electrotype. The electrotype people I could not state positively, because there were three or four firms in town, and we were having cuts made at all of them. The names of these concerns was Kelly Engraving Company of Nashville; Oswald & Sons of Nashville, and then I think [839] there was Jimmy O'Connell. I believe he ran the Nashville engraving Company, O'Connell now has the Capitol Engraving Company. The word "Koke" was a line cut, with some plain black letters, just the plain type, a zinc cut that was made by one of these three concerns ten or eleven years ago. Before that time we had printed the word "Koke" in the label for shipping purposes. That was not very long before we made the cuts for him. We made an engraved label, and he sent it out to bottlers to put it on the bottles that he sold extract to. The others were only made a short time before that. We have no specimens of that printed label made some twelve or fourteen years ago. I have got the cut made for the label to go on the bottles. That is at the office. I could procure it; it will be a little trouble. I will do that. I do not know whether I can find Koke labels or not, we have lost the samples down there. Mr. Mayfield's place of business twelve or fourteen years ago was located in the same building with our

(Deposition of W. F. Boylin.)

office on Second Avenue, just across from Union Street. At that time he was making Celery-Cola. I do not think he ever did any good with Vigo and Ginger Ale, and things of that kind. He made up goods but did not sell it. He made Celery-Cola before Koke. I should say he made Celery-Cola two or three years before he started making Koke. He continued making Celery-Cola while making Koke and sold both products. We made labels at that time for both Celery-Cola and Koke. I may find some Celery-Cola labels, I could not say, we made several hundred thousand Koke labels, but nothing to compare with Celery-Cola. We do not make Koke labels for Mayfield now. We have not had any business with him for several years, we are not doing business with him at all. The sample Koke labels were made between about fourteen years and two and three years ago. I think we made several different kinds of cuts for Koke, and Celery-Cola. I will bring up as many kinds as we have. You know when they get out of date we do not keep them, we destroy them because we have so many. We do not always keep samples of all the labels we make. [840] We do for a certain length of time, I should say about three years, and then they accumulate so we destroy them to get rid of them. If we know they are not used any more, we destroy them. I know I have some of Mayfield's cuts. Mr. Mayfield's business some twelve or fourteen years ago was located with Diehl & Lord, and he had his office in the same building, that is, when I left for

(Deposition of W. F. Boylin.)

St. Louis, afterwards, I believe, he had his office in one of the office buildings in town. I think he moved his manufacturing plant to St. Louis after I came back from there. I am not positive about that, because after I came back from St. Louis, I was not connected with him as closely. We did not work for him after he came back from St. Louis. We made up some dope labels for him when we were making up Celery-Cola, Blue Ribbon Ginger Ale, Koke and Dope. I might have some cuts of the dope labels made by the same firms. I am not sure when we made these dope labels, but they were made along about the same time. It might have been a few months difference or a few weeks. We made Celery-Cola, Dope and Koke labels for him, but more of Celery-Cola. His manufacturing plant was at Diehl & Lord's, once, and in some place on Second Avenue, I could not say where else. I do not know whether Mr. Mayfield went to St. Louis after I came back here or not, he had a fellow, Van Deusen, making his Koke, but where he was making up his goods I do not know. I never went to his plant in St. Louis, I know we shipped goods there. I know we printed labels for him after I came back and he was having goods manufactured in St. Louis. I think we have made different kinds of labels for Mr. Mayfield up until last year, Dope, Koke and Celery-Cola. He has not manufactured in Nashville for several years, since he commenced at St. Louis, not to my knowledge. We were sending those labels to different points where he was in business.

(Deposition of W. F. Boylin.)

We sent some to Dallas. New Orleans was the last. It was about two years ago when we shipped to New Orleans, that was the last shipment we made to Mr. Mayfield at all. They were shipped to J. C. Mayfield, New Orleans, Louisiana. I do not remember what [841] address. I could not tell when I ordered Coca-Cola that a man was serving me Coca-Cola or some other drink. In fact I drink very little. If I ask for a dope or a koke I do not expect to get Coca-Cola, I expect to get some other product and not Coca-Cola. I do not remember as I ever asked for dope or some *some* fifteen or sixteen years ago. Dope or koke may apply to Coca-Cola. If I called for dope or a koke I might get Coca-Cola and might get something else. We made up a label for Texa-Cola also, I do not know when. They were engraved labels, I have some of them and of Cole's Cola. That was for a North Carolina concern, I do not remember the place., I have the engraving of that. We made up Texa-Cola five or six or seven years ago. And Cole's Cola that was seven years ago, it may be longer and may be less. And Fletcher's Cola, we never made that until two or three years ago. We have not made any for some time for the firm has been bankrupt. We have the engraving of that, I have no cuts but they can furnish labels. This Diehl's Star-Cola, we have those made from engraving too, we have cuts and specimens of that. Gerst's Cola, that is made here. We made Gerst's for him when he first went into the bottling plant, a good while ago. When they first opened the

(Deposition of W. F. Boylin.)

bottling plant I heard the words dope and koke for fifteen years ago, anyway. I was living at Nashville when I first heard of the words. I would not swear to having heard of it for fifteen years. I made Koke labels for the people at Franklin, Kentucky. This Diehl & Lord's bottle they have the name blown in the bottle on the side about middle ways down. "Diehl & Lord, Nashville, Tennessee," blown in the bottle. The name of the drink is just on the crown. At the ball park the boy pulls the crown and hands you the bottle. I knew J. C. Mayfield fourteen or fifteen years, just here in Nashville. The first I knew of him he was making Celery-Cola but not Koke. That was all he was making then to my knowledge. I have been about his place at Diehl & Lord's. I do not know about his personal business, but I have been to Diehl & Lord's. We were in the label business. [842]

Deposition of Adam Diehl, for Defendants.

ADAM DIEHL.

Direct Examination.

Seventy years of age; reside at Nashville; lived here fifty years. Engaged in bottling business. We have been bottling soda water for forty-seven years; have bottled sarsaparilla and Root beer. The color of these drinks is caramel color, the same color as Coca-Cola. We color those drinks with burnt sugar coloring, caramel coloring; we use caramel coloring because it is less injurious. We have been putting out those drinks, sarsaparilla and root beer

(Deposition of Adam Diehl.)

for forty-seven years, and both have been the same color all that time. We manufacture a cola drink, Star-Cola, we have been putting out that drink about fifteen years, we make syrup for the making of the drink, we sell it to soda-fountains and bottlers, advertised around town and all over the United States, in the Bottler's Gazette, and that is supposed to go to every bottler in the United States. Around in Nashville we have advertised it on billboards, daily papers, programs, these slides in picture shows. Star-Cola is sold at the Baseball Park exclusively. We have a large sign right opposite the grandstand, which shows "Diehl & Lord's Star-Cola and Pepsin, sold exclusively on these grounds." Then we have ten or fifteen boys taking it through the audience, and they have it on their buckets and printed across the face of their caps, and then the boys are all instructed, and which they do, when they go selling it. "Diehl & Lord's ice-cold Star-Cola and Pepsin and Digestol," the three drinks we sell there. We advertise also on the program. We advertise our drink as sold exclusively at the ball park, we make that our specialty in the advertising. Customers say "Give me a dope," "Two dopes" "A Pepsins Nut" or "Digestol," if there is four, some call for "Star-Cola" and some say "Give me a bottle of Cola." When they ask for dope, Star-Cola is served. They know when they ask for Dope and are served Star-Cola that it is not Coca-Cola, by the boys calling "Diehl & Lord's Star-Cola," by the advertising on the sign too, and by the advertisement

(Deposition of Adam Diehl.)

I have put on the program that Star-Cola is sold exclusively [843] on the grounds. On the bottle is "Diehl & Lord's Star-Cola." The crown has also "Star-Cola" on it. The label is blown in the glass. When a customer asks for a dope I understand that he wants any cola drink. I do not regard the name dope as a specific and definite name for Coca-Cola exclusively. I would take it from experience, my experience has been when they call for dope they want ours, or whatever we have got, when they want a cola drink, they will say "Give me a dope" or "coke" some nickname of that kind. If a customer came into my place of business and asked for a dope, I would understand he wanted a box of cola drinks. There are forty or fifty other cola drinks on the market to-day that I know of, I could not mention them all. I have known of cola drinks on the market I suppose twenty-five years. They are all about the same color as Coca-Cola. All cola drinks have the same taste with some little difference, but there is a similarity amongst them all. We have shipped syrups in red barrels. When we were doing all of our own painting we painted them red, because red paint was the cheapest. We got Digestol and other drinks, Jersey Creme, and things like that frequently in red barrels. I would know a Coca-Cola barrel by the head, they have a large paper label that they paste on the head of the barrel, but I would not know a Coca-Cola barrel by its color, because all reds look alike to me. If there was no label on the barrel, I could not tell the Coca-Cola barrel from any other

(Deposition of Adam Diehl.)

barrel. I have never seen a cola product not the same general color of these I have spoken of. I have never tasted one not the same general taste as ours.

Cross-examination.

I put Star-Cola on the market for the first time about fifteen years ago. There were eight or ten or fifteen cola products at that time. They were Celery-Cola, I could not tell, I could not name all of them now. I do not remember just what they did call them those days, but the drummers would be in continually with different colas, trying to sell them. Coca-Cola was on the market then. I have known Coca-Cola [844] ever since it was introduced into this market. I do not remember how many years ago that was. One of the earliest cola drinks that we handled was Mayfield's Cola, that was before we commenced putting up Celery-Cola. That has been sixteen or seventeen years ago. Mayfield's Celery-Cola, we were bottling it. I could tell you the first one I ever bought by referring to my books and looking up the old advertisements in the old books. I do not think we have any, but by going back to the Bottler's Gazette those times, you could get it. Which was the first I do not know, Mayfield claims that he made Coca-Cola before Coca-Cola, that is all I know.

Mr. ROGERS.—I move to strike the answer as hearsay.

Objection overruled and appeal prayed and granted.

The "Bottler's Gazette" goes to all bottlers, it is

(Deposition of Adam Diehl.)

a trade paper. We wanted a cola drink, we had been bottling Mayfield's Cola, and there was a chemist by the name of Duke Bashford, and he taught my son to make the different extracts that we used in our business, and amongst the drinks he gave us a receipt for a cola drink. That has been ever since we have been handling Star-Cola, and from that time we quit bottling Celery-Cola, Mayfield's Cola, and bottled our own, under our own name. I have been using the same formula ever since, the same receipt from Duke Bashford, they have added something to it since, my son has. What was added to it and when I do not know. Two or three years or longer than that, he has been experimenting after he got Bashford's recipe, he kept experimenting himself along that line until finally he got something that satisfied him that suited his taste. It is a cola flavor. I do not drink any cola at all, I have tasted it. It has been years, three or four or five. I drank Coca-Cola at times, but I have quit drinking it several years ago. I have known their advertisements, "Koke Company of America," in the "Bottler's Gazette." There are four or five trade papers, the "Southern Carbonator," I think I have seen it in one of them, or maybe all of them. I have seen their advertisements of the drinks under the name of "Koke" and "Dope." [845] When I talk about "Koke" I mean the product of the Koke Company of America. When I talk about Dope or Koke either, it usually refers to a cola drink with me. It does not mean any special one, when I saw Koke or Dope, it would

(Deposition of Adam Diehl.)

mean with me as a bottler, if I was going to bottle the stuff and wanted Koke, I would call for "Koke Syrup" but the general public when they are at the parks, for instance, they would call for Dope that would mean they want a bottle of cola. I have hear them call it Koke, and Dope. That is what they mean down there, we only sell three drinks, and when they call for Koke or Dope, the boy knows he means a cola drink. I am not now actively in charge of our place of business. I have been in charge of it up to five or six years ago. I never to my knowledge bought any Coca-Cola barrels from a party named "Fox" and used them without repainting them. The boys are all instructed when they call for "Coca-Cola" to tell them they have no Coca-Cola, but have Star-Cola. We instruct, them that way because we want to advertise Star-Cola, and then we do not want the public to be deceived. All cola drinks look alike. I want the public to know they are drinking Star-Cola. This Star-Cola has been advertised all over the United States in Bottler's Gazettes and by circulars, to the bottlers. We also advertise in the Druggist's. There is hardly a State in the Union that we do not sell some. There is a billboard in Nashville that has a sign of Star-Cola on it, in the park, that is the only one. We had several around one year, we put up twenty-five or thirty in Nashville and on the pikes leading into Nashville, seven or eight years ago. We advertise in the "Tennessean" this past year. I could not tell how long. Those circulars sent out for bottlers, I do not know whether

(Deposition of Adam Diehl.)

we have any or not. The program at the park is the program I referred to, and they frequently have entertainments in which they get up part of the expense by getting advertisements on the programs at the theatres, sometimes, at festivals. The Bijou, the Vendome and picture shows. These billboards, picture shows, theatres, programs, all in Nashville. I do not [846] know whether my son has ever expended any money in advertising where we have bottlers that bottle Star-Cola or not. Caramel coloring is the least injurious, and that is the reason we use caramel coloring. It is sugar. I know that there are certain colors that are allowed to be used in soft drinks by the Government. They are not injurious not those, they are more expensive, all of them are more expensive, I am certain of that. Red paint was less expensive than any other kind, that was our experience. I never inquired for yellow material. The painter told us that red paint was the cheapest at the time.

Mr. ROGERS.—I object to the answer and move to strike that part of the evidence out as hearsay.

Objection overruled and appeal prayed and granted.

The advertisement in the Vendome Theatre advertised Star-Cola. It might have advertised Budweiser Beer; we had it and Star-Cola in there. We sold Budweiser Beer. If a man came up and would say "Give me a bottle of Bud," I think he wanted Budweiser. They did while Budweiser was being sold; it was a common thing to have people ask for

(Deposition of Adam Diehl.)

a "Bottle of Bud." I remember Coca-Cola since I remember any of them. I remember Coca-Cola before I sold Celery-Cola. I remember Celery-Cola, I think, twenty-five years ago. I won't be positive about the dates, right off-handed. I could not tell you. It may have been that I knew Coca-Cola before I did Celery-Cola. I have been manufacturing Star-Cola for fifteen years. I never bought anything from Hicks. Hicks gets out a Star-Cola. Advertisements of Diehl & Lord's Star-Cola, you will see it all around town in numerous places, but I do not know what my son has done nor the advertising man, to these bottlers that he has supplied. I have seen him shipping it out and shipping advertising matter to our people who handle our goods. I do not know whether it is put up or not. I do not know where any of these bottling plants are located.

Redirect Examination.

I cannot approximate how much I have spent in advertising Star-Cola. We did not spend a million and a quarter dollars a year plastering [847] the United States with advertisements of Star-Cola because we have not got the capital.

Deposition of John D. Fletcher, for Defendants.

JOHN D. FLETCHER.

Direct Examination.

Mr. Fletcher: Before they begin I want to state that I am not here at my own free will; I would not have come down here but for the fact that a United States Officer stated over the phone that he

(Deposition of John D. Fletcher.)

had a subpoena for me. I had been telephoned to this morning to know whether I was coming or would be here, and I did not intend to be here. I want that distinctly understood; this is no fight of mine, Mr. Hirsch, and furthermore than that, I am not here for the purpose of wanting to give any information on my own account whatever. My age is fifty-three years; reside Nashville, Tennessee. Lived here about fifteen or sixteen years; engaged in manufacturing carbonating syrup. Make syrup for soda-fountains and bottling purposes. It is a coca and cola flavored syrup. It is ordinarily known as cola syrup for making a cola drink. It is very similar to the color of Coca-Cola and very similar in taste to Coca-Cola. I have been engaged in this business about four years. The name of my product is "John D. Fletcher's Carbonating Syrup with a Genuine Coca and Cola Flavor," that is in syrup form, but we call it "John D. Fletcher's Carbonated Syrup, with a Genuine Cola and Coca Flavor" after it has been bottled and carbonated. We sell exclusively in the states, by-states, and by that name, as we are trademarked in the various states, and are using the name only in intra-state commerce. In shipping my syrup we ship it in barrels and kegs; they are usually red; I buy a great many Coca-Cola barrels, old, second-hand barrels. We paint our barrels that color because in the first place it is cheaper, I reckon, in the second place, the color of the barrels that nearly all syrups are sold in, red barrels. All syrups I have seen on the market, ex-

(Deposition of John D. Fletcher.)

cept Gay-Ola, I think probably they have had to change their barrel's color on account of some court decision. Customers ask for my product at the soda-fountains as "Cola," "Koke" and "Dope." I have heard [848] these words koke and dope. I do not know that I could say that I have paid any very great attention to it, only in the past few years, probably. I do not know that I have paid particular attention to it. Since the last four or five or six or seven years, probably. It may have been longer than that, but I do not know. The word "dope" means to me that they want a caffeine drink flavored with coca and cola flavors. The word Koke means the same thing. If a man asked me to take a dope with him I would naturally think it was a caffeine drink, whether it was Coca-Cola, Gay-Ola, Rye-Ola, my own drink or someone else's. I do not think the public would care what it was, whether one or the other, so they got a drink that satisfied their palate, and was strong enough in caffeine to feel it, you might say. I know of others on the market, cola beverages, probably a dozen or more. They are all the same color as Coca-Cola, all that I ever saw. There is a similarity in taste to Coca-Cola, they all have pretty much the same general taste. We color our drink with caramel. It is cheaper than anything else and it is permitted under the law, under all of the states, without having to put "artificially colored." It is not a deleterious coloring at all, and it makes a beautiful red colored drink. I do not think in the color of barrels, that that is any in-

(Deposition of John D. Fletcher.)

dication of the syrup or drink at all, those colors. In the first place, it is probably as I say, probably a cheaper coloring than anything else, and I do not know of anything else that would take the place of caramel coloring. My chemist, that I had with me for several years, never used anything else. The people were putting that color in it when I bought it out. I bought my drink from a man named Murphy, J. C. Murphy. He first called it Murphy's Cola, in June, 1910, and on the 26th day of September of that year he called it Murphey's Coca-Cola, and I bought it out, Celery-Ade Company, of which he has had the controlling stock and of which I had a considerable amount of money in, in the Celery-Ade Company, and he also owned the Nashville Syrup Company at that time and was selling Murphey's Cola first and then Murphey's Coca-Cola [849] second, by the Nashville Syrup Company, but I did not know anything about the business, Murphey's Cola, or Murphey's Coca-Cola, but was trying to save the money I had put into the Celery-Ade Company, and my partner and myself offered to buy his interest in the Celery-Ade Company which he refused to sell us—he refused to sell us his interest in the Celery-Ade Company without selling the Nashville Syrup Company, carrying with it Murphey's Coca-Cola, and I bought it from him in February, 1911, some six months after he had been calling it Murphey's Coca-Cola. However, I bought both companies, the Celery-Ade Company and the Nashville Syrup Company and of which the two to-

(Deposition of John D. Fletcher.)

gether cost my partner and myself in the neighborhood of twenty to twenty-five thousand dollars in money and property. That is how I come to be in the business. I do not consider the words Koke and Dope as specific and definite nicknames for Coca-Cola exclusively. I mean I am using as a basis for that, in their advertisements, when they say to call for Coca-Cola by its genuine name, nicknames encourage substitution, that is what I base it on. Our product is also put out in bottles, seven-ounce, brown-stock bottles. I sell to bottlers, and they put it in what they have. They can put it in red, black, white, any color bottle they please. They have their own stock colored bottles. I have known bottles of that class all my life, I reckon, brown bottles. I have known of other drinks being put up in bottles of that kind. I have never seen a cola beverage not the same general color. I have never tasted one not the same general taste as Coca-Cola. My beverage is similar to it. I do not think I ever saw a beverage not put up in a bottle of the same general appearance and size as the one in which Coca-Cola is put up. Those bottles, the color and taste of the drink are common to the trade. In the first place I think the public want the stimulation of the caffeine, because I think if it did not have the caffeine or the stimulating features of the caffeine they would not want the drink at all, and would not care about it. The second is that I think that the fluid extract of the cola and coca in it give it a peculiar aromatic flavor and taste that nothing else [850] does, and it is only

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that, I think, that causes me—I only speak for myself on that—specifically, to want that peculiar drink, is that my palate calls for that peculiar taste and flavor of the drink coupled with, of course, the stimulating features of the caffeine.

Cross-examination.

I have had some experience with the soft drink business. I have had four years experience, a variegated experience. I am not an expert in this business. I am familiar with the names used at the soda-fountains in asking for these drinks. I am familiar with the effects of caffeine. I know something about it. I am not thoroughly conversant with this caramel. I know caramel is used for coloring. I only accepted the formula that I bought, and what my chemist had done, and I knew it was not prohibited by the pure food and drugs act, national or state. I know caffeine is a stimulant, I got that knowledge from drinking it. Coffee and tea has stimulating effects for me also. I do not know anything about the comparison of the quantities of the caffeine in coffee and tea to the caffeine in my drink, only what my chemist swore, Dr. Hallett. That was in the Chattanooga trial; I have not studied that record very carefully; I saw it in the newspaper. I make a drink that has caffeine in it. The formula of Murphey's cola was made by J. S. Pemberton, I suppose. That probably would be absolutely true, but I do know the formula I used subsequently, afterward was sworn to by Mrs. D. Brown, as having been the original J. S. Pemberton formula. Mrs.

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Brown, I understand she is dead, she afterward married a man in Birmingham. I never met her in my life. I understood that she was married to J. C. Mayfield; she is supposed to be the same woman. I got my information from an affidavit, that the formula I bought from Mr. Romine, of Pulaski, in the year 1905, I believe it was 1905, he bought the formula from Mrs. Brown who swore in that transaction to the affidavit she presented in the litigation that I had with the Coca-Cola Company as having been the original Coca-Cola formula as put up by Mr. Pemberton in the preparation of Coca-Cola. [851] (Affidavit of Mrs. Brown.) "United States of America, State of Louisiana, Parish of Orleans, City of New Orleans, Personally came and appeared before me, the undersigned authority, Mrs. D. Brown, who, after being duly sworn, deposes and says: That this is the original Coca-Cola formula, owned and used by her before it was sold to the present Coca-Cola Company, of Atlanta, Georgia." Now just a second, will you—I stated that this was the formula that had been used by J. S. Pemberton. This formula that Mrs. Brown sold to Mr. Romine, now that was only the affidavit, but this was Mrs. Brown's statement contract, with the affidavit which went with the formula.

Mr. LITTLETON.—I want to enter an objection that—to the affidavit that has been read from, and to any statements that any one made who said he heard what Mrs. Brown said, on the ground it is hearsay and incompetent and on the ground that the

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original affidavit is not presented, and move to strike the question and answer.

Objection overruled and appeal prayed and granted.

This Mrs. Brown's statement to Romine, in which she says—(Reading:) “W. B. Romine, being duly sworn, deposes and says: and goes on to say—About fourteen years ago, I was one of the members of the J. S. Pemberton Med. Company, of Atlanta, Ga.; the firm consisted of D. J. S. Pemberton of Atlanta, Georgia, Mr. Murphey, of Barnesville, Georgia, (a brother-in-law of Judge Simmons, of the Superior Court of Georgia), Mr. Bloodsworth of Barnesville, Georgia, Mr. Mayfield of Atlanta, and myself. Dr. Pemberton put in the formulas of Coca-Cola, Pemberton's French Wine Coca, Indian Queen Hair Dye, Lemon and Orange Elixir, Globe Flower Cough Syrup, etc., into the firm and each of the other members of the *first* put in a certain sum of money. Mr. Murphey did the advertising, Mr. Bloodsworth the book-keeping, Mr. Mayfield and myself the manufacturing. Dr. Pemberton, who was in very poor health, superintended the manufacturing, when well enough. There was very little demand for Coca-Cola at the time, and when Dr. [852] Pemberton's only son, Charlie Pemberton, claimed Coca-Cola, we gave him the name and we used the same formula and put up a soda-fount syrup and called it Wine Coca. Charlie Pemberton afterwards told me he sold his formula and name Coca-Cola to the present owner, A. G. Candler, of

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Atlanta, Georgia, for Five Hundred Dollars. None of the Pemberton Medicine Company, except Dr. Pemberton, who was not a practical business man, had any experience in the patent medicine business, and when Dr. Pemberton died, soon after, we gave the business up, and divided the formulas. Mrs. Pemberton took the Indian Queen Hair Dye, which she afterwards told me she sold to the Walter Taylor Company, of Atlanta. Mr. Murphey and Mr. Bloodsworth each took formulas, and Mr. Mayfield and myself took Wine Coca,—in both tonic and syrup form. Mr. Candler, who was at that time in the wholesale drug business, began advertising Coca-Cola extensively, and it proved such a good seller that two years afterwards, Mr. Mayfield, Mr. J. T. Tady of West Point, Georgia, and myself, formed the Wine Coca Company of Atlanta, and used the original Coca-Cola formula, and called our syrup Wine Coca. For a year or so I remained in the office doing part of the manufacturing, correspondence, etc., and afterwards, for four years, introduced and sold the goods on the road, and when I left the Wine Coca Company, about eight years ago, we sold more goods in some of the southern states than did the Coca-Cola Company, especially in Mississippi, Louisiana, Alabama, and part of Georgia, and every soda-fount in Atlanta, with possibly two exceptions, were selling Wine Coca, in good quantities. The Wine Coca Company is now owned by Boston parties, with headquarters in Boston, Mass. This is the true story of Coca-Cola, and Wine-Coca. I never

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sold my rights to either the Coca-Cola or Wine-Coca Company.” “Mrs. D. Brown.”

That was part of the record in the case of Coca-Cola Company vs. Atlanta—I mean Nashville Syrup Company of Nashville, Tennessee. That was her written statement in the sale of that formula to Mr. Romine, accompanied with her affidavit and it was exhibited as a part [853] of the transcript in this particular case, by agreement.

Mr. LITTLETON.—I wish that same exception and motion to strike that which he has just read, be entered.

Objection overruled and appeal prayed and granted.

Caramel, so far as I know was the cheapest and it was not prohibited by either national or state pure food and drugs act that I had ever heard of. I know the United States possibly allows fruit colorings in other drinks, not of this class, however. Nothing will take the place of caramel colorings that I know of in price or in anything else. I buy old Coca-Cola barrels very frequently, they are on sale here. I buy a good many from Mr. B. J. Fox, who buys all the barrels he can. I do not buy them, however, because they are Coca-Cola barrels. We paint them over, not the red color of Coca-Cola, we usually paint them red. I would not know a Coca-Cola barrel by the red color. I did not know the Coca-Cola Company specifically had a patent or trademark on the color of their barrels. I never had heard of it. I buy the very cheapest paint I can get. I testified

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that dope now is used by the public at soda-fountains in calling for a caffeine drink, flavored with coca and cola. I put that "now" to it, because when I first knew the drink I never knew it to be anything else on earth except Coca-Cola, absolutely nothing, I never heard of the words koke or dope in my life until other drinks had been put upon the market and sold in competition to Coca-Cola, and that has been only in the last few years. I have known Coca-Cola for twenty odd years I suppose. I swore to the answer in the Nashville Syrup Company; in the case of the Coca-Cola Company of Atlanta, Georgia, against the Nashville Syrup Company of Nashville, Tennessee. I am John D. Fletcher, President of the Nashville Syrup Company. This was part of my answer and I swore to it. "Defendant avers and says that shortly after the preparation of Coca-Cola syrup and extract was put upon the market by J. S. Pemberton, for brevity's sake, the words Coca-Cola syrup and extract were contracted by the users and consumers of it, first, to the words "Coca-Cola" [854] then, to the words 'Coke' or 'Koke,' and finally, the product of J. S. Pemberton was styled 'Dope,' the consumers throughout the country believing the preparation or beverage to contain cocaine, the word 'Dope' denoting to the layman generally cocaine." Words Dope or Koke had never attracted my attention until other drinks had been put upon the market in competition with Coca-Cola and I do know of other drinks having been put on the market nineteen years ago. A drink I knew on the

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market at that time was Afri-Kola, approximately I will say nineteen years ago. I can positively say that they advertised it as having been on the market that long, I do not know of my own knowledge. I saw advertising of Afri-Kola in trade-sheets. Afri-Kola is on the bottle crown. As an extract I cannot say that he does advertise it as an extract except through the trade journal, bottling papers, but on his crowns, like I have—and they apply, however, to everyone else, they have Afri-Kola on the crown of the bottle in which his drink is put up, and it is used as an Afri-Kola beverage. (Excerpt from the Coca-Cola Company of Atlanta, Georgia, against the Nashville Syrup Company.) “By recent decision of the United States Supreme Court, the corporation owning and distributing Coca-Cola has been denied the right of sole proprietorship of this well-known name.” We denied positively any knowledge of that whatsoever. Denied it then and deny it now, and it was so accepted. I said the Coca-Cola people advertised to ask for Coca-Cola under its right name, the genuine name, or ask for Coca-Cola by its true name, that nicknames encourage substitutes. I do not know what nicknames you referred to, I suppose any nickname except Coca-Cola. That is in every street car in the country, I reckon, I have seen it all over the land.

Redirect Examination.

That answer I put up in that case, Coca-Cola Company vs. Nashville Syrup Company was sworn to on information and belief.

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Mr. HIRSCH.—We are going to ask that we be allowed to put in as Exhibit No. 1, to the testimony of Mr. Fletcher, the certified copy [855] of the answer. We have not got it right now and you can save any objection you want to, what I mean, we have not got it right now, but offer it in evidence, a certified copy of the answer of the Nashville Syrup Company in the case of Coca-Cola Company vs. Nashville Syrup Company in the United States Circuit Court of Appeals No. 3,676, as Complainant's Exhibit No. 3.

Mr. LITTLETON.—We object to that, first because the facts were brought out that this answer has no relation to the first examination of the witness, and the plaintiff has made the witness their witness on the points referred to, and cross-examination on those points is improper; and the Exhibit is objected to because incompetent and irrelevant.

Objection overruled and appeal prayed and granted.

Deposition of William F. Davis, for Defendants.

WILLIAM F. DAVIS.

Direct Examination.

Forty-six years of age, reside Nashville, Tennessee, since 1890. My company owns some drug-stores, the Davis Fuston Drug Company. I have an interest in those drug-stores. Our company own five retail drug-stores, have soda-fountains in all of them, dispense soft drinks from all of those soda-fountains, nearly everything that is offered for sale at soda-

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fountains. We dispense cola drinks, some drinks are Coca-Cola, Afri-Kola, Fletcher's Cola, Alicola, Arrow-Cola, I believe, it is, Star-Cola, Gerst's Cola, not all of those at every place, at different places at different times; we have used those cola drinks. I knew of other cola drinks besides Coca-Cola before 1909. I exercise a general supervision over these stores. I can hear the names our customers use in asking for the drinks they want. I frequently hear customers come in and ask for a koke or a dope. My instructions to the men are to sell the drink they think will give the best satisfaction. I do not instruct them to sell any particular brand of drink when a customer asks for a koke or dope. We give the one that has given the best satisfaction in the neighborhood, that is sometimes not the same drink in different neighborhoods. When customers come in and ask for [856] a Koke or a dope at our fountain, we do not understand they are making a definite and specific request for Coca-Cola exclusively. Koke, as I understand it, is a specific name more than dope is, that is for a Cola drink made and furnished through this territory from Chattanooga. Cola drinks on the market to-day—there are hundred coming in everywhere, some have been on the market for several years. I could not tell you how many. The color of these different cola drinks compared with the color of Coca-Cola is not much different, the taste in many cases is almost indistinguishable, and in other cases there is a noticeable difference. The Fletcher Cola is, I think, probably more distinguish-

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able than most any other that we have dealt in to any great extent. These different cola drinks we buy sometimes in barrel lots, sometimes in half barrels, and occasionally in five-gallon containers. The color of the barrels the different drinks come in is a muddy reddish color. I do not think we ever had anybody reject any of the Cola drinks we served when they asked for them as Koke or Dope on the ground that it was not the drink they asked for. Occasionally customers who come into our store and ask for drinks as Koke or Dope, and indicate to us the particular brand of drink they want. I think probably here Fletcher's Cola is called for maybe more than any other except Coca-Cola. Coca-Cola is called for more than any other drink. When a distinguishing name is used do not remember a customer call for Dope and indicate they want Fletcher's Cola. I do not regard the names Koke and Dope as specific and definite nicknames for Coca-Cola exclusively. I regard them, particularly dope, as a common name to a class of drinks, the caffeine or cola drinks. When a man comes into our establishment and asks for a Kope or a Dope, and is served with Star-Cola, Fletcher's Cola, or any other cola drink at our fountain, I consider that we are giving him what he is asking for. I believe we ought to sell the Koke when he calls for Koke, and by Koke I mean the product that comes from Chattanooga, Tennessee.

My profession is a practicing lawyer. I spend my time after supper, though, at the stores, some one of the stores. [857] I am kind of a financial head of

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the proposition. Mr. Fuston is the vice-president, he is at one of stores every hour of the day, he is the purchasing agent and the warehouseman. We have one practical drug man at each store. Sumner Fuston is the purchasing agent and warehouseman. Fred Fuston is a practical druggist. Number One is operated as the Nashville Drug Company, at Twelfth and Jefferson St., Number Two is operated as the Nashville Drug Company Two at 1803 Cedar St., Number Three is operated as the Hemlock Pharmacy at 22d and Church Streets, Number Four is operated as the Fuston Pharmacy at 2801 West End Avenue, Number Five is operated as the Davis-Fuston Drug Company, at Mulberry and Fourth Avenue. From the corporation standpoint Number Three would be the main store, that is where the books and everything are kept. I know what our dispensers sell when Koke and Dope are called for. I think I know every detail of every store. I am positive of what they sell when they call for Coca-Cola. It would surprise me to know that our men put this Koke you refer to, put it in a container marked Coca-Cola and sell out of that when Coca-Cola is called for. If they did it when Koke, Coca-Cola or Ala-Kola was called for, but not if dope was called for. I have heard of Koke since I have been in the drug business, since 1909. I have heard of the Central Koke Company's Koke since I was connected with the business. I do not know when the Central Koke Company was organized. We have not sold much of the Chattanooga product. I do not know when we commenced buying

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it, and I do not know what amount we have bought, but we are not handling it now at all. We handle three or four drinks now exclusively, that is, Coca-Cola, Fletcher's Cola, Arrow-Cola and Gerst's Cola. If a man asks for Koke at our fountain we would give him one of these colas. I would be surprised to know that Mr. M. A. Doty, when Koke was asked for, drew that syrup to make the drink from a one-gallon jug that set on the soda fountain, and asked some young man in the store where the Koke jug was, and the other fellow told him where he found the jug and after he made the drink [858] with the syrup drawn from this jug, Mr. Doty poured the balance of the syrup into the container where he had just served a drink under the name of Coca-Cola.

Mr. A. B. LITTLETON.—We object to that because there is no evidence in this record of any such occurrence.

Exception overruled and appeal prayed and granted.

I would not believe it at all, it is impossible that calls for Koke, Dope, and Coca-Cola were drawn from the same container. The boys may serve out of the same container when they do not indicate that specific drink is expected. When a man distinguishes that he wants the Coca-Cola drink in any manner, that means the Atlanta Coca-Cola. He is told there is none there if there is none. If there is any, he will be served the Atlanta Coca-Cola. Afri-Kola is sent to the stores there from the warehouse, or direct from the manufacturer, in one gallon or five-gallon con-

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tainers, we do not buy that by the barrel. It may be put in one of the syrup serving jars on the fountain, that indicates a cola drink of some kind. Coca-Cola is the common name. It is just possible that Afri-Cola or some other Cola drink is put in the Coca-Cola container if that is the only container that we can serve it from. I am not sure but that there is one container of that kind in each fountain. The Coca-Cola would be put in a different container, or kept in a dispensing bottle, or in a dispensing jar on the fountain, separate from there, the one that is made in the fountain. Pretty much the same conditions, with reference to serving except Number One. We have two or three different containers there, to keep the syrup separated, and serve the Coca-Cola in bottles there also. The Koke was kept just like we keep the other syrup. There is one, and probably two of our managers that won't serve Coca-Cola. We do not require them to if they don't want to. That is 22d and Church Streets, on account of some controversy that arose between him and the salesman of the Coca-Cola people, he won't use it and won't have any in the store. The name of the manager is Sumner Fuston. [859] I know Mr. Fuston makes it known to the public that he does not handle the Coca-Cola, so that he would not have stated that he was selling something else for Coca-Cola. He first started making the statement that he did not handle Coca-Cola before this conversation with Mr. Voyle-song. He was not selling it at that time. He may have served Arrow-Cola or Fletcher's Cola in response to

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orders for Coca-Cola. The other store that does not serve Coca-Cola is the South Nashville store, it does not serve it all the time. I have had it there occasionally but it does not continuously sell there. When they ask for Coca-Cola they get what we have got, unless they do not want it. They would get what we had, whether it be Arrow-Cola, Fletcher's Cola, or Gerst's Cola. Gerst's Cola is handled there more than any other brand, but they do not hesitate to state that they have not got the Coca-Cola. There are more people call for dope than any other name. I think dope is a nickname used for the Coca-Cola drink more than any specific name, probably. I have heard Gerst's Cola called for, I have heard Fletcher's Cola called for. I do not recall just now where the designating names of the other fountain drinks have been used. It is not frequently we hear of Gerst's Cola, and Fletcher's Cola. I do not hear of any name of drink called for at the fountain I have mentioned, John D. Fletcher's carbonated syrup, with a genuine Coca and Cola flavor. We buy our Coca-Cola from Spurlock-Neal. We did not buy much Coca-Cola for the year 1914, for the year 1913, I have no idea. Afri-Kola is priced a dollar a gallon, and it costs a little less than that. Arrow-Kola the same. Fletcher's Cola one dollar twenty-five a gallon. We get it for a little less. Star-Cola I think is a dollar a gallon. Gerst's Cola a dollar a gallon. We pay for Coca-Cola when we get it from Spurlock-Neal there in small quantities, one dollar seventy-five a gallon. We have sometimes, and most frequently,

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take a part of some one else's order, who has a contract at one dollar fifty cents a gallon, and we help him use it. One dollar and a half that is the smallest we ever paid. We have handled other [860] cola drinks ever since we have been interested in the business. Have always had some one besides Coca-Cola and sometimes more, occasionally we have used Coca-Cola exclusively. The last time we used Coca-Cola exclusively was in 1914. It was used most of the time exclusively in Number One, 1914, also Number Two almost exclusively. At this place we substituted Coca-Cola for Koke and Dope. We do not recognize Koke and Dope as meaning Coca-Cola at all. Dope refers to the whole class. In 1914 at these two places exclusively we substituted Coca-Cola when Dope and Koke was called for. As much so as it would be a substitution to serve any other Cola drink when Dope was called for. When Dope is called for I believe we can give any cola drink. I do not recall that the name Koke has ever been used in calling for drinks, but it probably is and we served what we have. We serve a cola drink unless there is a manifest intention on the part of the customer that he wants the Atlanta-made goods, but if he calls for the genuine Coca-Cola we serve the Atlanta goods, or we will tell him we have not got it. If he says Coca-Cola in a passive way, we might give him anything else.

Redirect Examination.

The Coca-Cola salesman made some kind of threat that exasperated our vice-president, and he had been handling Coca-Cola before that alternately and occa-

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sionally. At that particular time he happened to be out of it and the salesman insulted him in some sort of way, and he, I believe, ordered him out of the house, and since then he has refused to buy it at all. I was not present there.

Mr. HIRSCH.—I now move to rule out the entire conversation, because he was not present, and it must be hearsay evidence. Everything concerning that conversation related by the witness, I object to, as it is hearsay evidence.

Exception overruled and appeal prayed and granted.

Probably I met the same man, I do not recall. He came to me once over at Number One, of course I did not get mad at him. Over at Number One he threatened to take some stuff, a clock that had a Coca-Cola [861] name on it, and I think a jar of that, probably a dispensing jar, something of that sort, that had Coca-Cola on it, out of the house, if we served any other kind of drink than Coca-Cola. I laughed at him about it a little, and I told him that was our business. We would serve what we pleased, and he would not take either of those things out of the house there. At Number One we have served Coca-Cola out of a dispensing bottle that is labeled Coca-Cola, a jar that this man referred to was a pump jar, holding a gallon, or such matter. It is the old-style fountain. We handle other soft drinks there besides cola drinks. We always keep each drink in a container that bears the proper label if we have it, if we have not it, then we keep it where we

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can see it and know what it is. I do not recall any instance at any of our stores where this product Koke was served to a customer when he asked specifically for Coca-Cola.

Deposition of Sumner Fuston, for Defendants.

SUMNER FUSTON.

Direct Examination.

Forty-four years old; reside *Sliverdale* Park out in West Nashville. Engaged in the drug business. We have five stores all located in Nashville. We have soda-fountains in all of our stores. We make our headquarters at the Hemlock Store, at 22d and Church Streets. I am about the soda-fountain frequently so I can hear the names our customers use in asking for the drinks they want. We serve all kinds of phosphates, soda-waters, root-beer, etc. I sell Fletcher's Cola, and bottled Coca-Cola. I sell Fletcher's Cola at my fountain. We sell the Atlanta Coca-Cola only in the bottles. We have customers come into our store and ask for koke or dope. We serve, when they ask for Koke or Dope, Fletcher's Cola. When customers ask for either one of these they want what I have been serving them. I have dispensed Atlanta Coca-Cola. My trade was satisfied with Coca-Cola. I have always served that; I handled Atlanta Coca-Cola because I was out of Fletcher's Cola, and Fletcher could not get it to me as quickly as I liked, so I ordered a gallon out from Spurlock-Neal with my regular morning order. *Weel*, the trade was just not satisfied with it. They

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kicked on it. I knew they were not used to it, because I had always served [862] the other, so I did not serve it any more. The other syrup always appeared to be a richer syrup, a heavier bodied syrup and seemed to suit them. That was why I quit handling Atlanta Coca-Cola. I have a sign up at the fountain saying I handle Fletcher's Cola. I have had it up there for a long time. I know this, the trade is satisfied with it. I have been serving them for years and they do not know anything else except what I have been serving them. I have a line of trade that I have been doing business with for years, ever since I have been there. It will be three years in September, it was two years last September at this particular stand. I have had the Atlanta Coca-Cola complained of as not what was asked for when it was served to a man in response to a request for Koke or Dope. I do not know the fellow's name, only they called him Crusty, a fellow that drives one of Hill's Bread Wagons. He came in one day and we had some of the Coca-Cola on the fountain, had it setting back in a jug. There was a prescriptionist that insisted that he should have Atlanta Coca-Cola. He was from Atlanta or Jacksonville, and he wanted it himself, so I said to him, "Mr. Horn, my trade won't be satisfied with it, in the first place, and I do not care to put it in on that account, the other is perfectly satisfactory." He said, "I will tell you, I will bet that if you will put it in you will increase your trade. You will double it and they will walk for blocks to get it." I said, "You do not know our customers

(Deposition of Sumner Fuston.)

like I do, here. I have been catering to them right here for a good many years. I have been in business within a few blocks since 1908. So, to satisfy him, and give him his drink, I ordered and put it up. It happened that this fellow who drove the bread wagon was the first regular cola drinker that came into the house, and instead of taking it out of the jar I always served him from, I took it out of the Coca-Cola jug and served it to him. Of course Mr. Horn was standing there. Mr. Horn was my prescriptionist, he wanted to prove that I would double my trade with Atlanta Coca-Cola. This fellow took a sip of it and set it down and said, "Doc, you have mixed drinks on [863] me." "Why," Horn said, "that is the genuine Coca-Cola there, that is the sign that is on the bottle." Well, the fellow did not want it or want to be unpleasant, and he said, "Doc, I would rather you let me have that drink you have been letting me *hand*, if you have got it." Well, that little instance, of course, was one of several. I have been catering to that trade in that part of town for years, and know whatever satisfies my trade is what I want to sell. When customers come in and ask for Koke or Dope, I would not give entire satisfaction if I did not serve Fletcher's Cola, and I reckon I would lose their business. I do not see how I could be considered to be substituting, as long as I give them, they do not complain, but if I gave them the other they would. We keep those syrups at this store where we make our headquarters, they are in those big jars. We have to have them labeled so we can see the labels. The

(Deposition of Sumner Fuston.)

trade cannot see the labels. The label is facing us, a little thing here with a label on it facing the dispenser. We do not always keep a certain syrup in the container labeled with the name of that specific syrup. We cannot always do that, for instance, I have a jar labeled ginger. I have a simple syrup in it, because we never sell ginger. Hires' Root Beer is another jar of the same kind. Myself and the different clerks we all know from the location where the syrup is. We have none labeled Fletcher's Cola, I do not suppose the manufacturer knew anything about Fletcher's Coca-Cola. They labeled them, we did not pay any attention to them, and the tops came to us already labeled in the fountain. We got the syrup from the manufacturers in barrels, some ten-gallon kegs. The color of the barrels is red. If a customer should come into our soda-fountain and ask for a Koke or a Dope, I would not understand that he is making a definite and specific request on me for Atlanta Coca-Cola. I have customers drinking Coca-Cola that never tasted Atlanta Coca-Cola in their lives. You know a new cola drink is developed about every day, for the last few years, hundreds of coca-cola drinkers have never tasted Coca-Cola. You know when these people called me up I was [864] very much employed trying to get the goods out to the other four stores, and I made a remark I wished I was not a witness and did not have to come up here. This young man asked me what I was coming for. I told him something in regard to the Coca-Cola Company and other companies. One word brought on

(Deposition of Sumner Fuston.)

another, and he said, "I don't reckon I would know any difference."

Mr. HIRSCH.—I object to what other people said.

I do not think he would know the difference, and I said, "No, Mack, you have never drank any genuine Coca-Cola since you have been here, since you have developed your Coca-Cola habit right here, and I know you have never drank any in my store." That is one of hundreds of cases of my observation. I remember a call on me from a representative of the Coca-Cola Company. That was last summer some time. A customer came in; I was forward with him, and this gentleman (indicating Mr. Herr) came in, I did not know the gentleman that was with him, but I do know him. He came in and did not say, "Is this Mr. Fuston?" he came in with a card in his hand and threw it down and said, "How is your stock of Coca-Cola?" and indicated that he was representing the Coca-Cola Company. I paid very little attention to the card; anyway, I understood he was district manager. Of course I could not repeat word for word what passed between us. I know we had a heated discussion; he asked me how my stock of Coca-Cola was. I told him I did not have any except in bottles; I did not serve it at the fountain. Then he wanted to know if it was right, or trying to do the square thing, when people came in to serve them with that stuff I had when they came in and called for Coca-Cola. I told him it was right to serve my customers what was satisfactory, as well as I knew what was satisfactory and one word

(Deposition of Sumner Fuston.)

brought on another and we had a little discussion. I told him I was not selling Coca-Cola from Atlanta, did not intend to, I was not going to throw something away that was doing my trade better and giving them better satisfaction. I thought it was business for me to handle the Coca-Cola that I could make the most on and give my trade [865] satisfaction. He and I agreed that if I would sign up—have a sign put up there that I was selling Fletcher's Cola he and I would be friends. I think he took the position afterwards that if I put that up I would ruin my trade, anyway we agreed on that. I have got the sign up now, it may be that sometimes the boy will clean the mirror and leave it down, but when I come in I put it up again. I stil buy Fletcher's Cola by the barrel, that shows I am not losing business. It is my impression that he called it Fletcher's Coca-Cola. All I care about is to satisfy my trade and make as much money on the drink as I can. The first thing I consider is satisfying my trade, if I can buy stuff where I can make better margins, that is my business as a buyer.

Cross-examination.

Fletcher's Coca-Cola is made by the Nashville Syrup Company. Our signs were Fletcher's Coca-Cola. We put up the sign "We handle Fletcher's Coca-Cola." Outside of Fletcher's Coca-Cola I know of no other drink on the market, except Coca-Cola, made in Atlanta. When a man says Coca-Cola he does not necessarily refer to the Atlanta Coca-Cola. I know we have them to come in and ask for

(Deposition of Sumner Fuston.)

Coca-Cola. There is not one in ten that wants Atlanta Coca-Cola, and I can give a written guarantee that there is not a single stand in this town now, that they do not sell the genuine straight Coca-Cola from their fountains. It is adulterated before it goes into the fountain. I mean these people that call for Coca-Cola do not know what Coca-Cola is. They come to my fountain and call for Coca-Cola, they want the Coca-Cola they drink at my fountain. I know because they are satisfied. They say they are satisfied and if they were not they would not come every day, they want what they have been getting. When a man asks for Coca-Cola he does not want Coca-Cola, that is exactly it. They are wanting what I serve. When a man asks for Coca-Cola I give him Fletcher's Coca-Cola, that is what he wants. I know, and haven't they been trading with me for two years and a half. I am a druggist. I do not substitute [866] drugs. I told you I sold Fletcher's Coca-Cola and did not intend to sell anything else. If they say "I want Atlanta Coca-Cola," all right, here it is in the bottles. If they call for cola I give them whatever I have in the fountain unless they said they wanted the Atlanta Coca-Cola. Sometimes you fellows bring them in there, a sort of frame-up, but I have always got my eye on them, and tell them that we have not got the Atlanta Coca-Cola, except in bottles. I will give them Coca-Cola if they say very plainly "Coca-Cola." Of course, those gentlemen don't come and tell me, "I have been instructed to come and call for Coca-Cola." I know

(Deposition of Sumner Fuston.)

when a customer comes in and demands, "Give me a Coca-Cola," or he would say, "Give me a dope," or anything else, I have got some idea about when they are trying to run a trick in on us. There has been different times when strangers came in and asked for Coca-Cola. We serve Atlanta Coca-Cola when they tell us they want Atlanta Coca-Cola. I told the Coca-Cola representative I would sell Fletcher's Coca-Cola. I told him I was going to sell what I was selling, I do not remember the words exactly. My trade wants Fletcher's Coca-Cola. I know there is no different in the drink they want when they say Koke or Dope or Coca-Cola at my place, they mean what I have got; I have been serving it and it suits them, and they want it. Some people can tell the difference and some cannot. I drink but very little of it. I have got a sign up showing what they want, it says, "I handle Fletcher's Coca-Cola." Sometimes when the boys wash the windows and dress the cases they will leave the sign down and forget to put it back, and when I come along I put it back again myself. This container with Coca-Cola engraved on it I may have chocolate syrup in it right now, it may have Fletcher's Cola in it and it is likely to have a cola drink in it. I have known Coca-Cola ever since I have been in the drug business anyway, that is about seven years. I did not know Fletcher's Coca-Cola at that time. I do not know when Fletcher's Cola came on the market. I started buying Fletcher's Cola when it first came in, I am pretty sure of [867] that, although I do not remember

(Deposition of Sumner Fuston.)

the date. I do not remember the year. I think the concern that manufactured Fletcher's Coca-Cola changed to Fletcher's Cola. I think why they changed it was because they had some trouble with you. We are still selling Fletcher's Coca-Cola. I do not know whether I ever sold Atlanta Coca-Cola before that. I might have had some Coca-Cola syrup before that. I do not sell Coca-Cola except in bottles, and not particularly pushing that. My customers get Fletcher's Cola every time they call for a cola drink. If they call for Coca-Cola I give them that. They have instructions to do that at all the stores owned by and controlled by this company from myself. I am the head of it. Mr. Davis is president. During the years 1913 and 1914, as far as I can recollect, I do not remember buying any Coca-Cola myself. The managers in a great many cases, buy Coca-Cola themselves. If my manager says a thing suits his trade, he is at liberty to put it in. I intend to sell Fletcher's cola to my trade as long as they want it and are satisfied. When Coca-Cola is called for I have got it there for them. If you say Atlanta Coca-Cola, I will tell you I have not got it except in bottles, and I will give it to you in bottles if I have it. If you come in and say you want Coca-Cola without saying Atlanta Coca-Cola, I will give you just anything I have in the cola line.

Deposition of Paul E. Webb, for Defendants.

PAUL E. WEBB.

Direct Examination.

I am eighteen years old; have been soda dispenser at the United Cigar Store Company, Fourth and Union, Nashville, Tennessee, about eleven months, altogether about three and a half years, not in Nashville all the time, one time in Jackson, Tennessee, for four months. I have dispensed Fletcher's cola, Diehl's Star-Cola, and some other names. I do not remember the names of them. I am dispensing now Coca-Cola only. I have dispensed other cola drinks in addition to Coca-Cola at various other places I have worked. I have had customers come in and ask for drinks by other nicknames, some of the names they asked for, Koke, Dope, Poison, Shot. When they came in and asked for drinks by [868] those names, they wanted any kind of drink they could get, any kind of cola drink, it did not make any difference. I did not consider when they came in and asked for a koke, a dope, a shot, poison, any of those names, that they were making specific requests for Coca-Cola and nothing else. I regard those names as nicknames common to the trade, referring to cola drinks as a class. At the United Cigar Store I do not always keep Coca-Cola in the cola container with the label Coca-Cola on it, because sometimes the pumps will wear out; we have had pumps that have gotten out of fix and that did not work and we would have to change it. Other cola syrups come in red bar-

(Deposition of Paul E. Webb.)

rels. At the baseball park here at Nashville they serve Diehl's Star-Cola in bottles. They ask for Koke and they give them that, it has a red label on the bottle. The bottle has a big label on the side of it. They ask for that by Dope and Koke. I never heard anyone who asked for it by Dope or Koke reject it on the ground that it was not what they asked for. They mostly call for it by Dope and Koke, for it is advertised in the park. They have a large advertisement that says "Call for Diehl's Star-Cola." The boys carrying the containers they have for bottles, they have labels on them all over the sides, "Diehl's Star-Cola only." The people who ask for Dope know they are getting Star-Cola.

Cross-examination.

We use any kind of pump we have without the label Coca-Cola on it sometimes, we have one labeled Chocolate and one labeled Coca-Cola. The one we have labeled Coca-Cola we carry Coca-Cola in it. We have two containers but have no use for Coca-Cola in both. One labeled Chocolate and one labeled Coca-Cola, and have Coca-Cola in both. It is necessary to have Coca-Cola in the fountain to supply the trade. Before I went to the United Cigar Stores I worked at several different places, Smith Brothers, Jackson, Tennessee, I worked there four months. Paul & John Stumb's, I worked there eight months. Zeh's, down on Broadway in Nashville, I worked there two months and a half, and at [869] Skalowski's, about three months. I went with the United Cigar Stores on March 10th of last year, 1914.

(Deposition of Paul E. Webb.)

If a person came into the United Cigar store and asked for a Koke or a dope I would give them Coca-Cola. Skalowski used Coca-Cola, too, that is what they claimed. Zeh's had Coca-Cola and Diehl's Star-Cola. When a man asked for Coca-Cola, I served him Coca-Cola, and if a man asked for Dope, I served him Diehl's Star-Cola. I would not serve him Coca-Cola in response to orders for Dope or Koke. I had heard of Diehl's Star-Cola before that time. I served at Paul & John Stumb's Coca-Cola, at Smith Brothers, Jackson, Coca-Cola. At Smith Brothers in Jackson, when they had only Coca-Cola, I served Coca-Cola when asked for Koke or Dope. I did not think they wanted Coca-Cola. I knew there was such a thing as Koke, and giving other drinks when they did not ask for Coca-Cola, but I did not have any to use, I gave them what we had. Probably at that time I thought he wanted Coca-Cola when he asked for Koke but later on I knew the difference. I commenced selling Star-Cola when dope and koke were called for, at Zeh's. I was at Henry Sykes in the Stahlman Building and they used two kinds there. They handled Coca-Cola and dope, they said Dope was anything except Coca-Cola. They made more money on it, that is the reason that they sold the other for dope and koke. When I first started out in the business I understood the names "Koke" and "Dope" to be nicknames for Coca-Cola.

Redirect Examination.

I understood that they were nicknames of Coca-Cola exclusively, Koke and dope at first. I had

(Deposition of Paul E. Webb.)

worked at three bottling works, there was two different bottling works, that made other cola drinks and we had the Coca-Cola Company there that bottled Coca-Cola only, and we—in fact, I know of them, and if a person asked for anything except Coca-Cola he got it, at some places, but where I was permanently, we used Coca-Cola only. These other drinks they are sold in bottles that they ask for as Koke or Dope.

Recross-examination.

They had great long names and a person would not go to the trouble of [870] calling for them, they would just call for a koke or a dope and get them.

Redirect Examination.

They were put up in bottles, those other drinks. Anyone could tell it was not Coca-Cola by the crown on the bottle, the bottle was generally labeled.

Recross-examination.

I saw Diehl's Cola with labels on it at the ball park. I won't say positively, I remember at the time I saw those labels they struck my attention.

Redirect Examination.

At these places where I was and they served only Coca-Cola, when people came in and asked for a koke or a dope I gave them Coca-Cola, because it was all I had.

Deposition of Brants Darden, for Defendants.**BRANTS DARDEN.****Direct Examination.**

Twenty-three years old; live 219 Sherman Street, Nashville, Tenn.; lived here about fourteen years; business, engaged in, soda dispenser at Henry Skagg's, located Stahlman Building. I have been soda dispenser for Henry Skagg about four months the last time there; I worked for him once before. I have been a soda dispenser about six years. Have dispensed a great many different kind of drinks, I could not tell all of them. The cola drinks I have dispensed are Fletcher's Cola, Dope, Coca-Cola, and others, I cannot remember. I have known of these other cola drinks, other than Coca-Cola, most ever since I have been in the business. I have had calls for drinks under the names of dope and koke at the soda-fountains where I have worked. I have had customers come up and say, "Give me a Koke" or "Give me a Dope." I have had other names used. A lot of them will say, "Give me a shot in the arm" and different things about like that. I do not regard the words Koke and Dope as specific and definite nicknames for Coca-Cola exclusively. When a customer comes into my soda-fountain and asks for a Koke or a Dope I do not understand he [871] has made a definite and specific request on me for Coca-Cola and nothing else. The word dope means to me some cola drink, a drink of that order. In the places where I have worked and handled Fletcher's Cola and other similar drinks, when a customer came into

(Deposition of Brants Darden.)

my establishment and asked me for a dope I served him Fletcher's Cola at times when he asked for dope. At the different soda-fountains where I had other cola drinks than Coca-Cola and customers came in and asked for Dope I generally gave him what I made the most money on, when they call for a dope or a koke. I go out to the baseball park occasionally. Star-Cola is sold out there. Out there I have heard them call for Dope, things like that, and that is what they gave me. I have heard them ask for it, "Give me a Dope"—"Three dopes"—as many as they wanted, or "Give me a Cola or a Koke." Of cola drinks I have known of Ala-Cola, Star-Cola, Fletcher's Cola. They are almost the same color, look to me like about the same color, a slight difference in taste, pretty much the same general taste. They are almost the same color, they seem to me, there may be some difference in them. Just to a casual glance they look about alike. I have noticed the barrels and kegs in which the syrups of these different cola drinks are sent to the soda-fountain in, some were red—a reddish color.

Cross-examination.

At the ball park I never called for Coca-Cola. I have heard others call for Coca-Cola down there. They got the same thing as I did at that time—Star-Cola. Before I worked for Skaggs the last time I worked for the Elledge Drug Company of Pulaski, Tennessee, I worked there about eighteen months, before that I worked at Birmingham for the Norton Drug Company a short while, before that East Lake,

(Deposition of Brants Darden.)

then Norton's, then Pulaski, then Skaggs. Before I worked at Norton's I worked for John and Paul Stumbs about a year, before that I worked for Lopez at New Orleans, before that Harry Gears, Galveston, Texas, before that for Billings, Nashville, Tennessee, and before that Albert Wibber about two years, that is where I started. The drinks they were serving at Albert Wibber's were straight Coca-Cola, dope and many other [872] drinks, and koke. I do not know where Koke was made, I am not sure, but I think it was made at Nashville, by Mayfield, and they have branches, two or three branches, one of which is at New Orleans. I do not even know the name of the firm, I think it was Mayfield. I do not think it has been quite six years. I know I handled Koke there at Billings. I did not have anything to do with the syrup. Harry Grer handled some cola drink, I do not know whether he handled Coca-Cola or what cola it was. At Lopez's in New Orleans, I did not have anything to do with his syrup. I think I heard the terms dope and koke used there; whatever they had I served. At Paul and John Stumb's they handle Coca-Cola only. At East Lake I do not know what kind of dope that was, some kind of cola drink; it might have been Coca-Cola. At the Norton Drug Company I do not know. At the Elledge Drug Company they had Coca-Cola, also Fletcher's Cola. When a man called for Koke or Dope I gave Fletcher's, it did not make much difference; I always took it they wanted something on that order. The first time I heard the expression

(Deposition of Brants Darden.)

dope used was when I worked for Wibber's in the Arcade. I gave Coca-Cola when dope was called for. I understood they wanted a cola drink when dope was called for and I gave them a cola drink when dope was called for. I had the drink Koke at Wibber's and when I did not handle Koke I gave them Coca-Cola, or a cola drink. I do not remember whether I handled Koke the first or the last time I was there. As a rule I gave the one I could make the most money on. I did not practice that at the Elledge Drug Company. When they called for Koke I gave Koke, they paid five cents for Koke. The general policy has been when Dope or Koke was called for to give the one I made the most money out of. If I did not have those two drinks, any of that kind I happened to be handling, when they called for a drink like that, if I happened to be closer to that, I gave the cheapest drink, the one I could make the most money out of, but if I happened to be closer to Coca-Cola I gave that. When they call for dope or koke, as I told you, I would give them the first cola drink I came to, according to [873] what I was handling at that time. When they called for dope or koke I would give them some cola drink that we handled, and was nearest to me and sometimes Coca-Cola. I would rather give the one we make the most money on. At Skaggs' place we carry Coca-Cola now, that is all, we do not carry Fletcher's Cola. When they call for dope or koke we give them Coca-Cola. That is what I understand they want, but they are not calling for it, though. When a man comes in and

(Deposition of Brants Darden.)

asks for a dope or a koke or Coca-Cola, I make up that drink from the syrup drawn from the same container, whichever of the three names he says. When they ask for dope or koke I give Coca-Cola. I have only been with Skaggs since October. I was with him before that. At these other places, when a man came in and asked for Coca-Cola I gave him what appeared to me to be a cola drink. I never served when Coca-Cola was called for anything except Coca-Cola. What the people wanted when they asked for koke or dope I always thought they meant something on the cola drink line, some kind. Fletcher's Cola is cheaper than Coca-Cola. That is one reason why I served Fletcher's Cola for dope and koke, and because it is a cola drink.

**Deposition of John D. Fletcher, for Defendants
(Recalled).**

JOHN D. FLETCHER.

Direct Examination.

Q. 1. Mr. Fletcher, you were asked on your cross-examination this afternoon about certain parts of the records in the case of the Nashville Syrup Company vs. Coca-Cola Company. The Coca-Cola Company of Atlanta vs. Nashville Syrup Company of Nashville, Tennessee, in the United States District Court, at Nashville. I present you a transcript of that evidence, and ask you to turn to the affidavit of Judge John S. Candler, and read what that says. I think it is at page 123.

COUNSEL FOR COMPLAINANT.—Enter ob-

(Deposition of John D. Fletcher.)

jection thereto, as being incompetent evidence.

Objection overruled and appeal prayed and granted.

The affidavits above referred to are as follows: The affidavit of Asa G. Candler, is as follows, appearing on pages 124, 125, and 126. State of Georgia, County of Fulton: Before me, an officer duly [874] authorized to administer oaths, personally appeared Asa G. Candler, who being first duly sworn, in the above-stated case, on oath deposes and says that he is fifty-nine years of age and resides in the City of Atlanta, Georgia, and that he is President of the Coca-Cola Company, the complainant in the above stated case, and has been continuously since the organization thereof, in 1892, and that since the organization of the Coca-Cola Company deponent has been actively and intimately connected with the manufacture and sale of Coca-Cola, and thoroughly familiar with all of its formulas and processes of manufacture, and with all of the details of said business. Deponent states that he, individually, owned the formula, trademark and trade name of the Coca-Cola before he transferred and assigned the same to the Coca-Cola Company, and was familiar with the original formula. That said process was never patented or copyrighted. Deponent states that under the formula obtained from him by J. S. Pemberton, his transferees and assigns, coca leaves were used in its manufacture, but it was never intended in their use, preparation and treatment in the formula to get therefrom any cocaine, and that from his

(Deposition of John D. Fletcher.)

intimate contact and relationship therewith, Coca-Cola has never contained any appreciable amount of cocaine. Deponent states that in a suit brought by said Company against the United States Government in the year 1899, to recover money paid under International Revenue Tax, it was stated by a chemist for the government, and also by another chemist examined as a witness on the trial of that case, that they had found approximately one four-hundredth of one per cent of cocaine in samples of Coca-Cola syrup analyzed. That neither this deponent, the Coca-Cola Company, nor its officers had known or believed prior thereto, that cocaine was present in the product, even in this inappreciable amount, said cocaine not being a part called for by the formula, for Coca-Cola, at the time of its inception, at any time since, and that the testimony of these chemists was the first intimation that they had had that there was ever the slightest trace of cocaine in [875] said product, and that said slight tract of cocaine, if it was present in the product prior to said suit, it was due to imperfections in the method of manufacture and not to the formula and was unknown to deponent, and that as soon as said information was received by the Coca-Cola Company, it immediately adopted another method of treating the Coca leaves, which this deponent is informed and believes entirely eliminates all traces of cocaine. Deponent further says that the process and formula for Coca-Cola is a secret one, but same has never been patented or copyrighted, and any reference in any of

(Deposition of John D. Fletcher.)

the transfers or other papers to a patent or copyright are inaccuracies and errors in the use of such words. Deponent further states that the Coca-Cola Company has never had any litigation of any nature whatsoever in the Supreme Court of the United States, not being a party to any case or proceeding in said court. Deponent states that he makes this affidavit for use in the above-stated case. And further this deponent saith not. Signed: Asa G. Candler.

And the affidavit of John S. Candler, is as follows:

State of Georgia, County of Fulton; Before me, an officer duly authorized to administer oaths, personally appeared John S. Candler, who, being first duly sworn on oath deposes and says that he had had his place of business in the City of Atlanta for thirty years, and that he has resided within close proximity to the City of Atlanta for thirty-five years, and that he is fifty years of age. Deponent states that he is a member of the law firm of Candler, Thompson and Hirsch and that he is General Counsel for the Coca-Cola Company, a corporation organized and existing under the laws of the State of Georgia. Deponent states that as its general counsel, and as an officer of said corporation, he has been in intimate touch and has had close acquaintance with the Coca-Cola Company since the organization of said company. Deponent states that he is perfectly familiar with the drink manufactured by the Coca-Cola Company, and has known of the details of the manufacture of Coca-Cola since the Coca-Cola [876] Company

(Deposition of John D. Fletcher.)

commenced the manufacture thereof. Deponent states that as counsel for Asa G. Candler, he has prepared the petition for Charter for the Coca-Cola Company, and as its attorney aided in the organization thereof. Deponent states that even before the organization of the Coca-Cola Company he was familiar with the product known as Coca-Cola, and that deponent, as attorney for Asa G. Candler, aided and advised concerning the purchase of the formula, trademark and trade name from J. S. Pemberton, his transferees and assigns. That he is perfectly familiar with the formula so purchased by Asa G. Candler, and that he came in contact with the manufacture under said formula. Deponent states that at one time he had his office at the office of the Coca-Cola Company, and that at all times since, Asa G. Candler, the now President of the Coca-Cola Company, purchased said formula, that he has been acquainted with said formula, and the manufacture of said drink. Deponent further says that under the formula so obtained by said Asa G. Candler, from J. S. Pemberton, his transferees, and assigns, coca leaves were used in its manufacture, but it was never intended in their use, preparation and treatment in the formula to get therefrom any cocaine, and from his intimate contact and relationship therewith Coca-Cola has never contained any appreciable amount of cocaine. Deponent states that he was of counsel for the Coca-Cola Company in a suit brought by said Company against the United States Government in the year 1899 to recover money paid

(Deposition of John D. Fletcher.)

under Internal Revenue Stamp Tax, and that in that suit, it was stated by a chemist for the government, and also by a chemist examined as a witness on the trial of the case, that they had found approximately one four-hundredths of one per cent of cocaine in the sample of Coca-Cola syrup, analysed. That neither this deponent, the Coca-Cola Company, nor its officers had known or believed prior thereto that cocaine was present in the product, even in this inappreciable amount, said cocaine not being a part of that called for by the formula of Coca-Cola, at the time of its inspection, nor at any time since, and that testimony of these chemists was [877] the first intimation of even the slightest trace ever found in said product, and if said slight trace of cocaine was present in the product prior to said suit, that it was due to imperfections of the method of manufacture, and not to the formula, and was unknown to deponent, and that as soon as said information was received by the Coca-Cola Company it immediately adopted another method of treating the Coca leaves, which this deponent is informed and believes entirely eliminates all traces of cocaine. Deponent further says that the process and formula for Coca-Cola is a secret one, but same has never been patented or copyrighted, and any reference in any of the transfers or other papers to a patent or copyright are inaccuracies and errors in the use of such words. Deponent further states that he has been legal adviser of the Coca-Cola Company since the organization of said company, and deponent states

(Deposition of John D. Fletcher.)

that the Coca-Cola Company has never had a suit or litigation of any kind whatsoever in the Supreme Court of the United States, nor has any case ever been heard or decided in that court to which said company was a party. Deponent states that this affidavit is made for use in the above stated case. And further this deponent saith not. Signed, John S. Candler.

These affidavits were made in the case of the Coca-Cola Company vs. Nashville Syrup Company and what I have just read from is a copy of the transcript in the Circuit Court of Appeals.

Mr. HIRSCH.—We admit that.

Mr. HIRSCH.—And I further object to that, that it is improper redirect examination.

Objection overruled and appeal prayed and granted.

Deposition of John R. Pardue, for Defendants.

JOHN R. PARDUE.

Direct Examination.

Twenty-four years of age; reside at Nashville; business, Freed and Haas's place in Nashville, Tennessee. I have been there six years, my occupation is assistant manager. I look after the syrup department and the cream department, head dispenser of the fountain. They have a soda-fountain among other things. At the soda-fountain we serve all kinds of cold drinks in the way of sodas, soft drinks, and phosphates. [878] Some of the cola drinks we have are Koke, Dope and Coca-Cola,

(Deposition of John R. Pardue.)

others I have dispensed since I have been dispensing soda water are Star-Cola, Fletcher's Cola, I believe those are about the only ones. I have been dispensing soda water about ten years I think. Before I was with Freed & Haas I was with Page & Simmons Drug Company of Nashville, Tennessee, before that Youngerman & Rust of Nashville. Before I went to jerking soda water I remember of Celery-Cola. Some customers called for Coca-Cola, some for Dope and some for Koke. We have had a few calls for a shot in the arm. When a customer asks for a dope or a koke I give him what he calls for. If he calls for Koke I give him a Koke. If he calls for a Coca-Cola I give him Coca-Cola. Mayfield makes Koke. I have been dispensing this Koke for going on six years. I have dispensed that ever since I have been with Freed & Haas. When a customer comes into our establishment and asks for a Koke or a Dope I do not know what he wants any more than I give him what he calls for; in other words, I give him the drink that costs the less money in response to Koke or Dope. I give him Mayfield's Koke or Dope, that costs less than Coca-Cola. When they ask for Koke or Dope they want something of that class, a cola drink. When a customer comes in and asks for a Koke or Dope, I do not understand he is making a specific or definite request on me for Coca-Cola exclusively. I frequently go into soda fountains myself and ask for cola drinks, I ask for them as koke or dope, it makes no difference to me so as I get a cola drink.

(Deposition of John R. Pardue.)

Mr. HIRSCH.—Pardon me, we do not object to leading questions, but I think you have gone the limit.

Mr. LITTLETON.—Well, you can note the exception.

Mr. HIRSCH.—Note an objection to the question and all that he has asked, because they have been leading.

Objection overruled and appeal prayed and granted.

I also dispense Coca-Cola at my soda-fountain. I believe day before yesterday, or two or three days ago, one of our customers come to the fountain and called for a Coca-Cola and the boy gave him Coca-Cola; [879] and he got sore about it, come over to the cigar case and said the boy gave him some dope or something. He did not know what it was. I told him it maybe it was Dope he had been drinking before. He said, "I do not know whether it is or not, I do not pay much attention to what I call for." I went up there and gave him a Dope and said, "Is that is?" He said, "This is what I want," and he told the boy, "When I come up again this is the drink I want, it don't make a dam what I call for." I gave him Mayfield's stuff, and I ran out of Mayfield's Dope here, it has been about a year and a half ago, I believe, we were out for four days and used straight Coca-Cola on the fountain and we got kick after kick on it about serving old Dope. They kicked and said something was the matter with it.

(Deposition of John R. Pardue.)

Cross-examination.

When customers ask for koke I could not say and know that they want K-O-K-E but a fellow would be a damned fool not to give Koke that costs less than Coca-Cola. If you were working for me and give Coca-Cola syrup that costs me more money to a fellow who did not call for it, I would not fire you but I would pick you up and throw you over the counter. If he calls for coke or dope I am giving him the cheapest syrup I have on the fountain. We do not buy two kinds of syrup from Mayfield. I think it is labeled Koke and Dope, the same syrup. We have a container at our fountain for this Koke and Dope, and Coca-Cola syrup is in a different container. Everytime anybody comes up and asks for Koke, we give it to him out of the Koke or Dope container, and if he asks for Coca-Cola we give him the cola out of the other container. We have always done that, all the time I have been there, six years. I fooled one of the Coca-Cola men and offered to bet him about it, but he would not bet. He took Mayfield's Koke and thought it was Coca-Cola. I did not fool him, he picked out Mayfield's Koke for Coca-Cola, and called it Coca-Cola. Yet there is enough difference in the syrup to have people to kick about Coca-Cola. We put Mayfield's syrup in one container and Coca-Cola in another container. I have never served Coca-Cola [880] out of the Koke or Dope container when asked for Coca-Cola. I gave orders for that to the three boys at the fountain. I says, "If they want Koke or Dope,

(Deposition of John R. Pardue.)

give them Mayfield's stuff; of they want Coca-Cola, give them Coca-Cola." Their instructions were to give them what they called for. I am at the fountain about eight hours a day, six some days. I do not know whether I was at the fountain on September 11, 1914, I might not have been there at the time. I might have been downstairs at the time you tried to get me, I make syrups and look after the cream downstairs in the basement, first up and down. September 11, 1914, I was there. On September 11, 12, 14, 1914, October 19, 20, 21, 1914, Freed & Haas were using separate containers for that one syrup Koke and Dope and a different one for Coca-Cola. When a man came in and asked for Coca-Cola I did not serve him out of the container that had the Dope and Koke in it, and I am quite certain that when a man asked for Dope and Koke I did not serve him out of the container that had Coca-Cola in it. I do not know what goes on in that place when I am not there. There is one container used for Koke or Dope and a separate container used for Coca-Cola, and that has been going on for six years. We buy our Coca-Cola from Spurlock, Neal & Company. I do not know how much we bought in 1914 or 1913, I am not the buyer. Calls for Koke and Dope are in the majority, that applies to anyone that calls for it. When Koke, Dope, Shot in the Arm, and those terms are called for I serve the cheapest drink I have got. It applies to a cola drink. I do not know that they want Coca-Cola. I have never served Coca-Cola in response to calls for Koke, Dope, or Shot in

(Deposition of John R. Pardue.)

the Arm. I do not know whether the nicknames apply to Coca-Cola. They want a drink on that order, a cola drink. I don't know whether some of them mean Coca-Cola. I take it they want a cola drink, because those drinks are cheaper, that is the reason. I do not know whether they want a Coca-Cola or not. I feel justified in giving them what they want if they do not call for Coca-Cola. I do not know how much Coca-Cola my firm bought from Spurlock, Neal & Company in 1914. We did not receive many calls for Coca-Cola in 1914. Calls for Coca-Cola [881] have been about the same all the time I have been there. I am not the buyer. The calls for Coca-Cola have been about the same for the last six years. The sale of Coca-Cola has not declined any. We use an ounce of syrup to make a glass of Coca-Cola. I serve something like twelve customers in a day, about an average day. I do not believe I will serve that many the year around, in winter time we won't average a gallon of Koke and Dope together. An average of 36,000 people pass there. We sell I guess between two and three gallons per day of Koke and Dope in the summer, and of Coca-Cola, I don't really know, I do not believe that much at our fountain. I could not say how much. Some days it will be three or four times, sometimes it will be three or four days before I have to fill the jar up. I think it holds three quarts. We sell two or three gallons of Koke and Dope a day, and sell three quarts of Coca-Cola in three or four days. Koke and Dope is just a nickname applied to cola

(Deposition of John R. Pardue.)

drinks. I suppose it arose something on the cocaine idea, about cocaine being in the drinks, in Fletcher's Cola, Coca-Cola, and several other drinks. I cannot say where, except that I have heard it was in all cola drinks, customers have said so at the fountain. I have heard it was in all cola drinks. I have argued that with customers at the soda-fountain, that there was cocaine in cola drinks, Koke and Dope or Coca-Cola. I first heard the expressions Koke and Dope some ten or twelve years ago, I think. That was before I heard of this Koke and Dope. Other drinks I knew about ten or twelve years ago was Celery-Cola. Fletcher's Cola has not been on the market that long. I heard of Celery-Cola when in Nashville. It seems to me Star-Cola was on the market then. That is all I can remember. I first heard of Coca-Cola more than eight or twelve years ago. Have heard Koke and Dope in connection with Coca-Cola at that time. I heard of Celery-Cola and Star-Cola first before Coca-Cola. I do not know what dates it was, it has been somewhere about twelve or thirteen years ago. I had not heard of Coca-Cola prior to twelve or thirteen years ago. I had never seen any advertisement of it, hadn't heard of it at all as I can remember. [882] The reason the nicknames arose was on account of the discussion as to cocaine, that is my idea, I do not know. I have heard of cocaine in regard to Coca-Cola and Fletcher's Cola, and all of them. I have heard it in the last three or four years. I never heard it about Fletcher's Cola before then. I heard it about Coca-

(Deposition of John R. Pardue.)

Cola. I heard of Coca-Cola about ten years ago, I think, also Celery Cola. I do not know anything about Diehl's. I knew of Star-Cola at that time. They just said all Coca-Cola and dopes all had dope in it, and I heard that about ten years ago, and we have discussed that ever since. Don't know of any persons calling for Koke or Dope at Fried & Haas' that knew we handled it but they might know. We have had dope on the fountain for the length of time I have been there and I guess they had it before. We get it from St. Louis, Mo., I think. I do not know how long we have been getting it from St. Louis nor where we got it from before we got it from St. Louis. I think we have been getting the syrup Dope and Koke for the past six years. We have notified the public that we handled Koke and Dope by telling them over the fountain. Some take Koke and Dope for a fountain nickname and some do not care what you give so as it is a cola drink. Sometimes we have orders for Coca-Cola. We have never advertised that we handle Koke and Dope, no more than talking. When I first went to Freed & Hass' there was about four gallons of Celery-Cola, if I am not mistaken. I do not know where it came from. We kept the syrup down stairs. We do not let anyone see it or know what syrup we are handling. We had a Coca-Cola clock in our place but it got out of fix and we put it back in the bookstore. I won't be sure whether any sample has been taken at our place recently on October 21, 1914, by a person asking for Coca-Cola, but there was

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somewhere, it might have been before or around there that this gentleman came in and I tried to bet him about that syrup. I do not know who he was. He picked out Dope for Coca-Cola, he wanted Coca-Cola and Dope. It was along in the Fall of the year. He got a sample of Coca-Cola, that is the fellow there, he had a private talk with Mr. Freed in the office and then Mr. Freed came up and called for one of each. It was between [883] 2 and 4, it was along in the summer or fall of the year. I do not remember whether I was on duty about October 20, 1914. I do not remember a man coming to the fountain and asking for Coca-Cola syrup, and taking some away from him. We have two fountains. The two fountains come together, the draining board is here. Coca-Cola is the first jar on that fountain, and then strawberry, chocolate, lemon, orange, dope or koke, vanilla and simple syrup that is eight. We have another one over here, we have sixteen pumps on this and eight on this one. On this one first comes cherry then orange, dope or koke, lemon, chocolate, strawberry, pineapple and vanilla is eight. In "C" there is Pepsol. (Witness thereupon writes his name on the diagram.) Since I have been in business there at Freed & Haas' that Koke and Dope on the one hand and Coca-Cola on the other have been in separate containers. We have had this pump fountain where all the sixteen pumps are, we have had new pumps put in there, about two years ago, and on that last fountain, the reason there is no syrups in there when the pumps

(Deposition of John R. Pardue.)

get broke on this one, a spring may get worn out, we use the pump and get the old pumps and put them up there and it may be you will find strawberry, Coca-Cola, and Dope, there will be Dope put in Chocolate, there may be vanilla, or they are all mixed up. I do not think there is any labels at all, they are blank I think. We are told to be careful not to get the labels on Dope and Koke. Freed & Haas tell us when we get orders for Coca-Cola to give Coca-Cola, and when we get orders for Dope or Koke, or any of these Cola names, to give them the Dope syrup. When a fellow comes up and calls for a Root Beer, I have not got but one at this place, I have had more at other places, I say, "Do you take Hires' Root Beer?" They do not give instructions about other soft drinks. I am told the syrup of Koke and Dope is cheaper in price than Coca-Cola. We have a gentleman named Regan that works with us now. Mr. Freed and Mr. Haas are in the city. They do not attend the fountain regularly lately. Mr. Haas has bought out a new business at the Transfer station. Mr. [884] Fisher is general manager. Mr. Freed or Mr. Haas is generally there. They are around that fountain occasionally when anything happens or goes wrong. They stay most of the time around about the cigar case, fruit stand, candy case, maybe down stairs. I have calls for Hire's Root Beer which we handle. We give Hires Root Beer when Root Beer is called for because we have nothing else to give them. We ran out of Mayfield's product about two years ago, and served Coca-Cola

(Deposition of John R. Pardue.)

when Koke and Dope were called for. Our customers kicked about it. I think it was four days we were out of it. It is all one and the same drink, Koke and Dope. I do not know how these names Dope and Koke originated except the discussions about cocaine. Customers like Koke and Dope better and it is cheaper.

Redirect Examination.

We have more calls for just Root Beer than for Hire's Root Beer. Like you go up to a bar and call for a beer, there don't everyone go up to a bar and say give me a certain kind of a beer, they just say they want a glass of Root Beer. When people ask for Koke and Dope they want a cola drink, a stimulating drink. I think there is a Parke-Davis Root Beer or sarsaparilla weakened down as a root beer and Humphrey Smith makes a root beer—all extract people make one. I never heard anybody advertising strawberry flavoring in bottles, or advertising in the newspapers, drug-stores and around town that Bill Jones makes strawberry soda in bottles, at all soda-fountains. But people come and ask for that, strawberry soda, and lemon soda.

Recross-examination.

In ordering a drink of cola or koke, or dope, they come up and order and say "Give me a Koke or Dope," I do not know any more than they want some drink, a koke or a dope or a Coca-Cola. It makes mighty little difference. They want a cola drink, a stimulating drink. Customers tell me it is all a

(Deposition of John R. Pardue.)

dope, is all I know about it, and a dope will make you feel good, it will liven you up, it comes from stimulation.

Redirect Examination. [885]

A dope fiend is a fellow that takes dope, it is something that livens you up, makes you feel good, it is a drug. I have heard they have caffeine in them, or cocaine, a fein of some kind, a feine drink is all I can tell. (Complainant's Exhibit #4 to the testimony of John R. Pardue introduced, which is a diagram, showing the containers at the fountain of Freed & Haas.)

Deposition of W. F. Boylin, for Defendants.

W. F. BOYLIN.

Recross-examination.

(Exhibit #5 to this testimony shown.) We tore that out of our catalogue we used to mail out to our trade. I expect I can find a copy of the catalog, and I will give you that catalogue out of which that was torn. We made up this label (indicating the label at the lower right hand corner of page marked "Celery-Cola"). That catalog was issued about six years ago. The Celery-Cola was made for the Mayfield Company. (Exhibit #6 shown.) The cut was made about, either three or four years ago, it was made in the spring of either three or four years ago. That was made for the Mayfield Company also. (Exhibit #7 shown.) It was made twelve or thirteen years ago for the Mayfield Company. It was made by one of the engraving companies in the city.

(Deposition of W. F. Boylin.)

I ordered it made myself here in Nashville some twelve or thirteen years ago.

Mr. HIRSCH.—We will offer the catalog in evidence as complainant's Exhibit #9 it is agreed that it may be filed as Exhibit #9.

CORRECTION.—Mr. Boylin is 38 instead of 28 years of age.

Deposition of Max Bloomstein, for Defendants.

MAX BLOOMSTEIN.

Direct Examination.

Fifty-one years of age last December; reside in Nashville; lived here fifty-one years; engaged in the drug business. Have a soda-fountain at our drug-store. Our drug-store is located 506 and 508 Church street, in the shopping district. We handle Coca-Cola and Diehl's & Lord's Star-Cola, and Koke and Dope. I am about the fountain frequently and can hear the words our customers use in asking for the different drinks they want. If they want Coca-Cola a majority of them will say "Coca-Cola," and the words Koke and Dope are used very largely, generally [886] signifying that they want any stimulating drink, that has caffeine in it. Sometimes a man—if you are not drinking Coca-Cola, will call for the drink under that name, Koke or Dope, and generally it means just any of them. Any drink with caffeine, any stimulating drink is called for by the name of Koke or Dope. When a customer comes in to our soda-fountain and asks for a Koke or a Dope, right now he is served with Koke or

(Deposition of Max Bloomstein.)

Dope preparation made in Chattanooga. Before that was put on the market he was usually served with Star-Cola, made by Diehl & Lord. When a customer comes in and asks for a Koke or Dope and is served with Diehl & Lord's Star-Cola, I surely consider that I am giving him what he asked for. I have heard these words Koke and Dope from five to ten years, I cannot state exactly. The words Koke and Dope mean to me, any drink having caffeine or stimulant in them. I regard these names Koke and Dope as nicknames designating a class of drinks, rather than a specific drink. I cannot say just exactly where that slang koke and dope originated. I presume it originated because it just had the same effect. I have heard the word dope as applied to cocaine, to morphine and heroin before I ever heard it applied to the drink, quite a number of years ago. I have no way exactly of knowing how long. I have heard it applied to the drinks, but dope, seems to me to be something that stimulates or makes you feel a little better or a little different from what you ordinarily did, it was originally applied to morphine and cocaine because it temporarily rejuvenated a man and I think it was applied to Coca-Cola just after having been applied to the cocaine and morphine drugs, that is my idea. I have known ever since I have known drinks, just what was in them. I do not know whether the ordinary layman who drinks them knows what is in them, but I have always known why they stimulate and why they have that effect. There is caffeine in

(Deposition of Max Bloomstein.)

them. Caffeine is referred to by the public frequently as a dope. Each man seems to flavor his drink just a little different, and sometimes they try to make caffeine drink and do not, and if he had been drinking one particular make of caffeine drink time and [887] again and he was not served that particular make of caffeine the next time I have occasionally had some one to remark that that was not just what he wanted.

Cross-examination.

I have been in the drug business thirty years, the name of my place is Max Bloomstein's Pharmacy. I worked about eleven months for some one else and have been in business for myself thirty years, for the first two years I was with a brother under the name of Bloomstein Brothers and since that time I have been in business for myself. I have known of Coca-Cola about twenty-seven years, it was not called dope then. My recollection is that dope was applied to Coca-Cola, it being the first of all these stimulating drinks, no doubt it was applied to it first. I cannot truthfully answer that question because I do not remember. There were quite a number of those drinks that sprung up, my best recollection is it was applied first to Coca-Cola. I have handled Coca-Cola since I bought a stock of goods from the Latham Richardson Drug Company twenty-seven years ago there was nearly a full barrel of Coca-Cola in that stock. I do not remember the color of that barrel. I remember it tasted like the old fashioned worm seed and the Company made a change in the flavoring

(Deposition of Max Bloomstein.)

and sent me another barrel to replace that. At that time it was nearly a full barrel. It came from Atlanta and it had been bought by my predecessor. My predecessor was the Latham Richardson Drug Company. I have been handling Star-Cola probably five years. I have been handling Koke and Dope about a year or such a matter. It comes to me labeled Koke and Dope. I changed to Koke and Dope because Koke and Dope are copyrighted names and I thought I was liable to indictment if I served anything else. When I was first approached to buy Koke and Dope I refused to buy it. I told them I had as many of those drinks as I wanted, and a card was handed me on which I saw that Koke and Dope were copyrighted. I immediately went to my soda dispenser and told both of them if anybody asked for Koke or Dope for them to be very particular and ask if they wanted Coca-Cola. I know [888] there are a whole lot of men out in the employ of the Coca-Cola Company and I did not want them to trap me. I am not particularly fond of lawsuits and for that reason I know if a man asked for a koke or a dope and knew of the Koke and Dope preparation, he wanted that. If he meant Coca-Cola he wanted them to give him Coca-Cola so I told my dispensers if anyone asked for Koke or Dope to ask the question, "Do you mean Coca-Cola?" Some did mean Coca-Cola and some did not mean Coca-Cola, but there were some of them that took offense at the question; "What do you mean, Coca-Cola?" Some says: "None of your damn

(Deposition of Max Bloomstein.)

business, you ought to have enough sense to know," or words to that effect. They became angry and at the end of two days my head dispenser said to me; "I think you had better not make us ask that," we are offending some of our customers, they seem to take offense." Because they all considered we should know what they wanted. It is pretty hard to know just what one will become offended at. That being the case I said we had better buy some Koke and Dope so when people called for Koke and Dope you can give it to them, and when they call for Coca-Cola you can give them Coca-Cola, and no one can be offended. I was very particular about the boys after that, cautioning them that if they called for Koke or Dope to give it to them, *and if they called for Koke or Dope to give it to them, and* if they called for Coca-Cola to give them that. If I did not want to get into a lawsuit and that is why I first started it. That is one of the kind of cards that was handed to me, as well as I can remember (indicating a card known as Exhibit #9), stating on it that Dope and Koke were copyrighted names. That is the reason I made my change from selling Star-Cola when Coke and Dope were called for, to Koke and Dope when Koke or Dope is called for. I handled Coca-Cola before I did Star-Cola. I also handled Fletcher's cola that was a caffeine drink. There was a time I handled Coca-Cola and did not handle some similar drink to it. I do not remember there were very many calls for Koke and Dope at first, it has only been within the last few years

(Deposition of Max Bloomstein.)

that the slang has crept around [889] amongst the young people. The better class of people coming into the store do not call for Koke or Dope, they call for Coca-Cola if they want it. I gave them Coca-Cola when they called for a Dope or a Koke at that time. I changed it to Star-Cola because Star-Cola was considerably cheaper. Koke and Dope are cheaper than Coca-Cola.

Redirect Examination.

In speaking of writing the Company in Atlanta about that first barrel of Coca-Cola, they told me they had just changed their formula and were putting the drink on the market that was a little pleasanter to the taste. I made the complaint that it tasted like worm seed, and I could not dispense it. I do not know whether it was because it was a little old, or the original taste or just what, I then received a letter in which they stated they had just changed the formula of their Coca-Cola and they would send me another barrel, which they did and I dispensed that, as it was I could not sell it, the people would not drink it. This specific product Koke and Dope has given satisfaction to my trade.

Recross-examination.

Referring to that correspondence with the Coca-Cola Company, all I know is it was signed by the Coca-Cola Company. (Exhibit #9 presented in evidence.)

Deposition of P. E. Johnson, for Defendants.

P. E. JOHNSON.

Direct Examination.

Twenty-one years of age; live at 504 Morton Street, Nashville, Tenn.; lived here all my life, business, engaged as soda dispenser at Warner Drug Company at the corner of the Square and Walker, 441 Public Square in Nashville, Tennessee. I have been a soda dispenser five years June 15, 1915. I was employed all that time at the Warner Drug Company. We dispense sodas of all different flavors. We dispense Coca-Cola and a black syrup called Dope. They used Fletcher's Cola and have used Diehl's Star-Cola. Customers use the cola drinks they want by asking for Koke, Dope or Coca-Cola. When customers come into our fountain and ask for a Koke or a Dope, we serve them Koke or Dope. When we [890], handled Fletcher's Cola and they asked for Koke or Dope we served Fletcher's Cola, and when we were handling Diehl's Star-Cola we served Diehl's. When I was serving those drinks in response to their request, I considered I was giving what they asked for. The name of Koke or Dope means fifty or a hundred, or more drinks in a class. They mean a class of drinks. I do not consider that when a man comes in to our fountain and asks for a Koke or a Dope that he is making a definite and specific request on me for Coca-Cola exclusively. Some of the Cola drinks I know of are Afri-Cola, Gay-Ola, Fletcher's Cola, Diehl's

(Deposition of P. E. Johnson.)

Cola. And I know there are a number of different ones on the market but I do not recall their names. I have heard these names, Koke and Dope applied to soda-fountain drinks since I have been going around and calling for drinks myself. I have known there were other cola drinks on the market besides Coca-Cola for about five years. The general color of these cola drinks are about the same. At the baseball park here in the summer time they serve Pepsin and Diehl's Star-Cola and the other drinks that run in that class. Diehl's Star-Cola is all that is advertised out there. The boys holler Star-Cola, Diehl's Star-Cola. I never drank any Star-Cola. It is about the same color taking the concentrated syrup and comparing the two, the beverage that is made from the syrup is about the same as Coca-Cola. If people ask for Koke or Dope at the ball park they get Diehl's Cola. When they get Diehl's Cola they know they are getting that because it is labeled.

Cross-examination.

I have nothing to do with the purchasing at all at Warner Drug Company. I have seen Coca-Cola barrels coming into the place all along since I have been down there. I have no idea from whom they purchase Coca-Cola. I see drays coming bringing them up there in the last two years since I have been back in the store, the Kiggin Transfer Company brings them. I have never seen any receipts for Coca-Cola. When I first went there I was assistant at the soda-fountain. I cleaned up and waited on

(Deposition of P. E. Johnson.)

trade, and I stayed there for about a year in that duty and I was [891] promoted to head of the soda-fountain and then my duties were to make syrup and see that things were kept clean and take charge of the business in general except the buying of the different goods that came in. I dispensed at that time. I was put in charge of the fountain about four years ago and I kept that up until about November, 1913. I still have charge of the fountain but went back in the store. I am assisstant register of prescriptions now but still have charge of the fountain and make relief watch at the fountain from twelve to one and five-thirty to six-thirty. If I work at night, six-thirty to nine. During last summer I forgot to state I was at the fountain. I was there in October, 1914. I was there on October 20th, at 7:15 P. M. I was not at 9:30 A. M., I don't think. On October 19th, which was Monday, my best recollection about it was that I was not dispensing. ' October 20th at 9:30 I do not think I was dispensing, but understand I do not make these statements as positive. At 7:15 P. M. on the 20th I was there. I do not know Mr. Hall Johnson. There is no other Johnson working at our place of business but there has been. To the best of my recollection from about the middle of January, 1914, till the middle of March, 1914, my brother was at the fountain. I am certain of that. I was the only Johnson connected with the Warner Drug Company, but there was not a dispenser there except myself by that name. I do not remember two gentlemen approaching our store on October 20th, at 9:10 P. M.,

(Deposition of P. E. Johnson.)

one asking to be served with Dope and another to be served with Coca-Cola, nor the one asking the dispenser to put enough Coca-Cola in a Thermos bottle, sufficient to make six glasses of Coca-Cola. I do not remember any such instance as that at all. I do not think I was at the soda-fountain at 12:10 P. M. on October 21, 1914. I do not remember two gentlemen calling at the fountain, one asking to be served with a Dope and another Coca-Cola. I do not remember any such instance at all. I remember someone coming in with a Thermos bottle and asking for syrup. I do not know when it was. I just remember of the Thermos bottle being there, I do not remember whether I filled it or not. [892] If he had told me at the time that you would ask me *able* it I might have been able to tell you. I do not remember anything about the conversation at all. I have been around calling for drinks about eight years. We keep a five-gallon can in the rear and keep the black syrup in that can. There is nothing on that five-gallon can, just a plain jacket can. The syrup comes out of the barrel the syrup comes in. I do not know what is on the barrel the syrup comes in. I do not know where the syrup and barrel comes from, either. By Koke and Dope I mean any product we might handle excepting Coca-Cola, in the way of Cola, Fletcher's Cola, Afri-Cola. We sell any besides Coca-Cola for Dope and Koke. We keep Coca-Cola all the time in one of the jars. Our fountain is at the Puffer Mfg. Co. just at present, since December 15, 1914. I will mark them, what they are flavored: "S"

(Deposition of P. E. Johnson.)

Strawberry; "P" Pineapple; "O" Orange; "Cher" Cherry. This is lemon, that is vanilla, that is cream, chocolate, plain, dope, and we keep Coca-Cola in a container back of the fountain. We have had this system about a month. Understand these are not like they are labeled, but like the syrups are in the jars. (Exhibit #10 introduced.) This the draft arm, it is in the center. There are ten on the dispensers' right. This first one was empty, I do not know exactly which jar it is. Call the fountain on the dispenser's left "A" and on the dispenser's right "B." Now, starting with the container at fountain A, the one on the dispenser's extreme left was empty, next to that I think sarsaparilla; the next one Pepsol, next I think Cherry Smash, next I think was empty, there might have been a little something in it. The next one was empty, the next empty, the next empty, the next empty, the next one that is in fountain A was Dope. On the extreme right was Orange in fountain "B," the next Pineapple, next Coca-Cola, next Lemon, next Vanilla, Cream, Chocolate, plain syrup, Cherry. The one on the extreme right I think was empty. The one at the dispenser's left was closest to the door. Prior to a month ago we did not keep Coca-Cola in "A" at all. We kept Coca-Cola at this time in Fountain "B," third container from [893] the dispenser's left. Prior to a month ago we served Dope and Koke from the #9 at my left. That was where it was usually taken from and if a man came in and asked for a Coca-Cola prior to a month ago we would serve him from my right, the one at fountain

(Deposition of P. E. Johnson.)

“B” that I have marked Coca-Cola. This method described in Exhibit #11, has been in vogue since I have been there except at times when some of the jars might have been sent back or the fountain was in repair, or in winter when we did not use but one end. Calls for Koke and Dope were served from one container and Coca-Cola out of the other, but I would not state positively all three were never served out of the same container.

Mr. LITTLETON.—I want to enter an objection to this line of cross-examination because there is nothing in this record to support the questions asked, there was nothing asked on direct examination about these matters and the plaintiff is making this witness his own witness and cross-examining his own witness on this feature and I further object to the form of questions as leading and as improper, and the cause, not based on anything in the witness’ direct examination.

Objection overruled and appeal prayed and granted.

When I went down there I was told that one was Dope and the other Coca-Cola. I was told to serve Dopes and Kokes and things like that from one end of the fountain and Coca-Cola from the other. When I went there and a man came in and asked for a Koke or a Dope I would not know what he wanted. There are so many so-called Kokes and Dopes on the market, and one specific Coca-Cola I would not know, I could not state positively what he might want but I imagine from the advertisements, etc., that he would

(Deposition of P. E. Johnson.)

call for Coca-Cola if he wanted Coca-Cola. I do not know what Dope and Koke meant to me eight years ago. I really did not think about it at the time. They never have since I have been at the Warner Drug Company served Coca-Cola when Dope or Koke is asked for so far as I know, when Coca-Cola is called for at the Warner Drug Company they serve Coca-Cola. One container at our fountain was marked Coca-Cola, the one on the right. The one that had this dope in it, I think it was blank. Since a month ago the container having dope [894] in it is marked "Dope." We just sent them back to the manufacturer and asked them to engrave "Dope" on it. (Offered in evidence Exhibits 10 and 11 to the deposition of the witness of P. D. Johnson.)

The WITNESS.—I am going to sign these and state what they are to the best of my recollection.

Deposition of J. E. Dunn, for Defendants.

J. E. DUNN.

Direct Examination

Twenty-five years of age; live 1824 Nassau Street, Nashville, Tenn., have lived here all my life practically; engaged in the soda-water business with the Nashville Drug Company. I have a soda-fountain in our drug store and dispense practically everything in the line of soda waters. My occupation at that place is soda dispenser. I am head dispenser. I have worked at John & Paul Stumb's and The Ocean, Stumb's is 202 Fourth Avenue North, and The Ocean is 224 Fifth Avenue North, Nashville. I

(Deposition of J. E. Dunn.)

have been dispensing soda water off and on around seven or eight years. Star-Cola is about the only cola drink I have ever dispensed to amount to anything except Coca-Cola. I have known of other colas on the market ever since I have been in the business, and that has been about seven years. Some of the other cola drinks I know of are Fletcher's Cola, Star-Cola, Matther's Cola. Where I work now we dispense nothing but Coca-Cola. We do have and have had customers at the other places come into the soda-fountain and ask for a Dope or a Koke. When I was dispensing Star-Cola and they asked for Koke or a Dope I would give them Star-Cola because it was the only one I had and I considered I was giving them what they wanted, because they practically all knew what I had. I did not consider he had made a specific and definite request on me for Coca-Cola only, but it all depends upon who it is asks for it. My regular customers come in the store down here, they know I handle nothing but Coca-Cola. They come in and probably say, "Give me a shot in the arm" or a Koke or a Dope, or something like that. I know what they want, but if a stranger should come in and ask for a Koke or a Dope or a shot in the arm, I would not consider he had specifically asked for a Coca-Cola because he did not call for [895] Coca-Cola. If I do not have anything but Coca-Cola there I would give it to him, but if I had a substitute I would give it to him. The words Koke and Dope mean as applied to a soda-fountain beverage different kinds of drinks, all this kind of stuff that is trying

(Deposition of J. E. Dunn.)

to imitate Coca-Cola, it refers to the Dope drinks as a class.

Cross-examination.

We handled Coca-Cola exclusively. I regard these these other cola drinks as imitations used principally as substitutes. At our present store we handle nothing but Coca-Cola and in response to calls for Koke or Dope or a shot in the arm, I serve him with Coca-Cola and understand that is what he means the biggest portion of my time. They use those names as nicknames for genuine Coca-Cola.

Redirect Examination.

These other cola drinks are cheaper and they make a little more money on it. Some do not run anything else in the fountain but that. Some places running up-to-date fountains, and a man calls for Coca-Cola he does not know what he is getting, except at this place up here, and it is very seldom they call for Coca-Cola straight because practically everybody knew what we handled. If a man puts it in his place, and serves it to everybody that comes in, no matter what they call for, it would be a substitute, but if a man puts it in and has Coca-Cola with it, and if a man calls for the substitute drink give it to him, but unless he calls for the genuine stuff give it to him.

Recross-examination.

I have never seen a cola drink yet that I could not tell from Coca-Cola. To my knowledge the biggest proportion that drink Coca-Cola can tell. Probably they will not say anything at the fountain about it if they get a substitute, but they know it.

(Deposition of J. E. Dunn.)

Redirect Examination.

If a person asked for a Dope and I gave him this so-called substitute, if he was a stranger to me and I did not have a personal knowledge that he wanted Coca-Cola, I would consider I was giving him what he [896] wanted. You will find the biggest majority of dispensers that are serving two will do that.

Recross-examination.

They give themselves the benefit of the doubt, they don't care so long as they get the drink to him and make more money out of it.

Deposition of W. W. Randolph, for Defendants.

W. W. RANDOLPH.

Direct Examination.

Twenty years of age; live in Nashville, Tenn.; have dispensed soda water at Hoodenpile Drug Company in West Nashville; about a year, I guess. Some of the cola drinks that we have dispensed are Star-Cola, Mi-Cola, Pepsin Cola, and I guess about a dozen others. I do not remember the others. I have heard of about a dozen cola drinks on the market several years back, as well as I can remember, about eight years, anyway. In asking for the cola drinks at our fountain, customers most all the time call for Dope. When they call for dope I give them any of those cola drinks I happen to have at that time. I hear them ask for Koke and Dope. When customers come in and ask for a Koke or a Dope they want any of those colas unless they specify one certain drink.

(Deposition of W. W. Randolph.)

I do not regard the words Koke and Dope as specific and definite nicknames for Coca-Cola exclusively. When a customer came in to our fountain while I was dispensing there and asked for a Koke or a Dope, I did not consider that he had made a specific and definite request on me for a Coca-Cola only. The color and taste of these different Cola drinks are all about the same. They dispense Cola drinks at the baseball park, they serve Diehl & Lord's cola there, that is served in bottles. They call for a Dope or a Koke or just any of those names in asking for it out there and are served with this Diehl & Lords Cola there. I never heard anyone object to it and say it is not what they wanted when they were served with it, on a call for a Koke or a Dope. We handled Coca-Cola at that time, too. When customers came in and asked for a Coca-Cola I gave them Coca-Cola.

Cross-examination.

The word Koke or Dope is used for all these drinks. I use it to apply [897] to these different drinks. I do not think they only mean Coca-Cola when they ask for a dope. If they call for a Dope they do not only mean Coca-Cola, they mean any line of these drinks. I do not suppose some of them mean Coca-Cola because any one of these drinks will stand for the same as Coca-Cola.

Deposition of W. H. Sidebottom, for Defendants.**W. H. SIDEBOTTOM.****Direct Examination.**

Forty-nine years of age; live in Nashville, Tennessee; lived here nearly forty-nine years, practically all my life. Engaged in ice-cream, confectionery, soda water, restaurant and coffee. The name of my establishment is Skalowski's, located at 527 Church Street on the main business street. I have been in that class of business about thirty years or more. I knew Mr. J. C. Mayfield fifteen or eighteen years ago at Nashville and St. Louis. He was engaged in manufacturing of soda-fountain syrups. The name of some of the syrups he manufactured was Mayfield's Celery-Cola and another was Koke. My recollection is that we bought the syrup two ways, we got it ready for the fountain and then bought it in concentrated form. When we bought it in fountain syrup it came in large containers, either half-barrels or barrels, and when we bought the concentrated, I think it came in five-gallon kegs. There were labels on these kegs to indicate what it was. Each one was printed according to the way it was sold, the different packages were branded according to the invoice. The aerated beverage, made from syrup was put up in bottles. I do not remember now his place of business in Nashville, it was so far back I cannot remember. The taste of this drink from the beverage he was making was similar to all cola drinks. The Celery-Cola was similar to all cola drinks, with the exception of a little bit of celery taste. The Koke was Koke, a regular

(Deposition of W. M. Sidebottom.)

cola taste. The color of these two beverages were dark, very much the same as Coca-Cola. There are now a great many cola drinks on the market; the Celery-Cola, Star-Cola, Cola-Ade. I have known of cola drinks on the market to my best recollection, twenty-five or twenty-eight years, I guess. I have never seen a cola drink that was not the same general color. All cola drinks are very similar in taste.

[898] At the establishment where I am now located we dispense Atlanta Coca-Cola, we dispense no others besides that. I have heard customers come in and ask for Dope or Koke, they did it every day. Fifteen or eighteen years ago when they came in and asked for Koke or Dope it depended upon the humor of the dispenser what he gave them, he would give them Coca-Cola or whatever kind of cola we may have on hand. My opinion is that Koke and Dope apply to any cola drink, and when a man comes into the soda-fountain and asks for a dope or koke I do not consider that he has made a definite and specific request for Coca-Cola but a cola drink, and that has been true for fifteen years, anyway. The firm of Dorider and Sidebottom, had the concessions at Glendale, and we dispensed, my recollection is, about three kinds of cola, Celery-Cola, Coca-Cola, and I think there was another cola on the market then. My impression is that we had three kinds of cola. Away back there if they asked for dope or koke we would give them either one we had. All the colas were labeled.

Cross-examination.

I have been with the Skalowski Confectionery

(Deposition of W. M. Sidebottom.)

Store about seven months. M. H. Skalowski is head of it. Right before that I was with The Union Ice Cream Company three years and seven months. Before that with Dorider & Sidebottom about twenty-one years. Dorider & Sidebottom were in business on Church Street here. When Coca-Cola is asked for at Dorider & Sidebottom's I served Coca-Cola. I guess we served most every drink on the market during that time. I remember serving Coca-Cola, very distinctly, and Celery-Cola, Kola-Ade and Koke and Dope, and many other things of that kind. I have known Mr. Mayfield for eighteen years, that is my best recollection. I do not know when he commenced manufacturing this product Koke, he was manufacturing Celery-Cola or Koke when I first knew him. The Cola was the first that I remember. It might have been fifteen or sixteen years, but my *impress* is that it was eighteen years. He was manufacturing in St. Louis. I remember buying some syrup from the Mayfield Company, Celery-Cola and cola. I remember seeing labels coming into our place of business [899] with the words Koke on them. We were doing business with them. I could not say, just what year, as I stated before, my recollection is we were doing business with Mr. Mayfield about eighteen years ago, but whatever we bought came labeled, whatever it was. I would not say I went right down and saw the Koke or tag labeled on the barrel, but I know what we did buy was invoiced that way. I do not know exactly what year it was. It is my impression that we had products coming to us

(Deposition of W. M. Sidebottom.)

from Mr. Mayfield that was labeled Koke. I did not say it was in the barrel, it was marked according to the invoice, what I ordered. That is all I remember. My recollection is that we were buying two products at that time, one was Celery-Cola, I am positive about that, and we were buying one other, and my impression is it was Koke, but I would not swear positively. We got a cola and Celery-Cola. I knew Coca-Cola twenty-eight years ago, do not remember any others. I do not know where Mr. Mayfield's manufacturing plants are. My impression was it was in St. Louis, he may have had a bottling plant or a manufacturing plant here. I know he had a plant in St. Louis, I was there. We are serving Coca-Cola there at Skalowksi's when people ask for dope or koke, and have been doing that ever since I have been there. I have charge of the ice-cream and catering and also the supplies for the fountain. I stay around the fountain, I have charge of the house in the morning.

Redirect Examination.

I remember the St. Louis Fair and it was back of that a good little while, during that time, that was during 1903, that was when I visited his place, during the World's Fair. I had been there buying these goods before that and when I got to St. Louis I saw the plant one day in passing and went down to see it.

Recross-examination.

I would not say eighteen years ago, if the Fair was in 1903, I would say twelve to fourteen years ago, I would say that. I remember some time twelve or fourteen years ago, ordering Koke or Celery-Cola

(Deposition of W. M. Sidebottom.)

from Mayfield's establishment, and that in response to those orders packages with Celery-Cola and Koke on them, came. My impression is they came from St. Louis. I did all the ordering. Twelve or fourteen years ago, I do not remember package or packages labeled K-O-K-E. They were marked so we [900] could tell whether it was Koke or Coca-Cola. That was spelled Koke. We were in business, as I stated, twenty—about twenty-one years, right down there. When we organized the Union Ice Cream Company four years ago we had every receipt, every bill, every check and every order-book that we had when we started business, and I built a bon-fire out in the rear of our place and I think it lasted two days. I guess we burned a ton and a half of papers, because the business was wound up and closed out, and we had no need for the stuff and did not want to hold it out. The word Koke was on the barrel twelve or fourteen years ago, that is my best recollection.

Deposition of J. M. Warren, Jr., for Defendants.

J. M. WARREN, JR.

Direct Examination.

Thirty-eight years of age; live in Nashville; lived here all my life. Engaged in the paint business, been engaged in that business eighteen years. I have sold paint to the Koke companies—Central Koke Company at Chattanooga and Southern Koke Company, New Orleans, and the Koke Company of Texas. I sold them red barrel paint. This paint I sold them has no particular name, only it is a

(Deposition of J. M. Warren, Jr.)

standard red, universally used by all concerns who have use for a paint on barrels and packages of that sort. It is the cheapest paint you can buy because the ingredients that go to make it up are the cheapest. Red oxide of iron and of course, oil. That has been a standard paint ever since I can remember, oh, eighteen years. That paint has been used mostly for painting barrels, cooperage and things of that kind. I sell it to all classes and trades, anyone that uses packages and barrels, we sell that paint to. I should judge 75 per cent of all paint that is used for barrels is red because it gives you more universal satisfaction and is a cheaper paint. There is a paint known as Coca-Cola red. Coca-Cola red is a very expensive red, used mostly, from my knowledge, in painting signs, bulletin boards, things like that. We have matched some paint called Coca-Cola red, sold to the local sign men here in town doing work for the Coca-Cola Company. This Coca-Cola red is a more expensive paint than this other one because it is a very durable red, a brighter [901] shade and a special shade. There is no comparison at all between the red paint I sell the Koke Companies compared with the color of the Coca-Cola red. One is a very bright vermillion and the other is a mineral paint, one is a manufactured article and the other a mineral dug out of the ground. The high-priced or Coca-Cola red is a manufactured and chemical paint. The colors are made from chemicals, a barrel painted Coca-Cola red, and another with the cheaper grade would look entirely different, you could distinguish

(Deposition of J. M. Warren, Jr.)

them in a minute. Coca-Cola red as I know it is a very bright shade of vermillion, and the other is what we call English Venetian red, a very much darker shade.

Cross-examination.

I have been making this paint for the Central Koke Company, the Southern Koke Company and the Koke Company of Texas about a year and a half. I believe you could get up a black barrel paint as cheap and as durable as the red. Coca-Cola red is a true shade, has a good rich tone to it where the other has a muddy color. I could tell them absolutely after I saw them, and the average person could, that is the signs, but not the barrels, they look alike.

Redirect Examination.

Our representative called on the Central Koke Company at Chattanooga, and in their conversation told him what kind of paint we had, etc., and he bought five gallons to try. Nothing whatever was said about the shade, he just bought five gallons of our standard red barrel paint and we sent it to him and since that time have been getting the orders. The price was the reason he bought from us probably. I think it was cheaper than the paint he had bought before.

Recross-examination.

The name of our concern is the Warren Paint & Color Company. The Coca-Cola people use on their barrels the regular standard English Venetian Paint. They do not buy from us but it is the same kind of

(Deposition of J. M. Warren, Jr.)

red, universal paint we all use, all manufacturers use, they look alike, and I could not tell the difference between them. They do not use [902] Coca-Cola red on the barrels to my knowledge.

Deposition of J. G. Booth, for Defendants.

J. G. BOOTH.

Direct Examination.

Nineteen years of age; live, Nashville, Tennessee; lived here all my life; business soda-dispenser. Have been soda-dispenser off and on probably three or four years. I have not been that long solid. Am engaged in dispensing soda now at Paul and John Stumbs, before that at Max Bloomstein's, and before that at The Ocean, and before that at Decker's, I think. We are dispensing Coca-Cola straight at the place where I am now working. I have known of Cola drinks ever since I have known the original Coca-Cola, I suppose it would be five or six years. Customers come into the soda-fountain and ask for a koke or a dope and call for lots of different names, as Koke, Dope, shot in the arm, shoot me, anything like that and Coca-Cola. When they ask for these names at Stumb's I give Coca-Cola, at the other places if they call for Dope there, as well as I can remember I give them something we had in the place of it. Maybe I would always have two pumps if they had anything else like that, and they would tell me if we had calls for Coca-Cola I was to give them Coca-Cola, and if they called for it straight that way, and then if they called for some other name

(Deposition of J. G. Booth.)

that we would not know for sure whether they wanted the straight Coca-Cola or some other drink, to shoot one of them to them. That is what they always told me to give. When a customer came into our place of business and asked for a Dope or a Koke I would think he was asking for a Dope or a Koke, there are so many different ones on the market, I would think he was asking for a class of drink instead of some specific drink. If he wanted the original Coca-Cola, if he is that particular about it, he ought to call for it under the real name of Coca-Cola and not a substitute name.

Cross-examination.

By a substitute name I mean Koke, Dope, shot in the arm. These other drinks are not substitutes for Coca-Cola, we would not tell them when we had calls for Coca-Cola. I do not think they are substitutes for [903] Coca-Cola. If a man comes in and calls for a Coca-Cola I always give him Coca-Cola, in fact, I never did meddle into the Company's business as to what they had there. I always knew which pump had the original Coca-Cola in it and which pump had something else. I also knew which one had Coca-Cola and which one had something else. I do not know that I meant anything but substitute names. There is Koke and there is a Dope. If they called for any one of those I would not think they wanted Coca-Cola because they said that. Sometimes they want Coca-Cola but it is not all the time I don't think. I would not consider Coca-Cola was the only cola drink manufactured. They look alike, taste

(Deposition of J. G. Booth.)

kind of alike. Some people could not tell the difference, but I could, and I have seen lots of people that can. My instructions were when they asked for a Dope or a Koke or a shot in the arm, to give some Cola drink. At some places they did not instruct me, I mean by instruct me, that they would not tell me they had substitutes, maybe they would and maybe they would not. If I did not get the syrup up I would not know. They put me there to sell over the counter and not to ask anything about what it was. Sometimes they had two pumps of different colas and at other places they did not have but one. They might not have had Coca-Cola so far as I know, and they might not have had Star-Cola, or Koke. I worked for Junger & Rusk and I did not serve any cola drink at all, any soft drink you wanted besides Coca-Cola and the cola drinks. I did not know all the people did not want Coca-Cola when they called for Koke or Dope, if they did they ought to have called for what they wanted. They did not say what they wanted and I just imagined that they did not. I did not know.

Deposition of J. B. Freed for Defendants.

J. B. FREED.

Direct Examination.

Forty-three years of age; live in Nashville, Tennessee, about twenty-seven years. Engaged in confectionery business at Transfer Station. Have been engaged in business there fourteen years this coming July. The name of our concern is Freed & Haas.

(Deposition of J. B. Freed.)

Our business has been the same during all that time. I knew Mr. J. C. Mayfield about thirteen years ago. First met him in Nashville. I knew him while he was living here. He was engaged in manufacturing syrups, Celery-Cola, and Koke. [904] We bought from him continuously since I began, about thirteen years ago. On the package that Koke came to us in, was marked "Koke," a little label on the head of the barrel. It was spelled "K-o-k-e." I have gotten the syrup from him in Nashville and in extract form from Birmingham, Alabama and St. Louis. When we got it in extract form before mixing it to make a drink we diluted it with a syrup. The packages, containers or barrels that we have gotten this extract from St. Louis and Birmingham in, have a label on them, a little piece of paper "Koke," I think it is kind of a "V" shape, or diamond shape. This syrup has always tasted about the same to me, all the time, I could not see any difference in it. It is somewhere near Coca-Cola, the color of the syrup and the extract are both the same color. The color of the drink made from this is the same thing, it has always been the same color and similar taste. We are still handling that same product and Coca-Cola too and always have during the past thirteen years, have never been without them.

Cross-examination.

We never substituted Koke for Coca-Cola, we sell them differently, and when a man comes and asks for a "Koke" I give him Koke. That is the instructions. All the boys working on the fountain have

(Deposition of J. B. Freed.)

to give Koke when they call for Koke. We have given those instructions ever since we have been in business. If a man comes in and wants Coca-Cola I give it to him. Koke and Dope are the same thing. I gave no instructions to the young men last night. Johnnie Perdue was talking to me last night and told me he had testified. I did not know he had been up here till he came back and told me. I talked with the dispenser that was on duty. I talk to him every night. Johnnie said you men wanted to find out where the Coca-Cola was. I said "There is Coca-Cola in this jar, and there has been Coca-Cola in this over here. There has been, but there is not just now." There has been Coca-Cola in there and you could not give a diagram of the fountain because you are liable to have Coca-Cola most anywhere. We buy our [905] Coca-Cola from Spurlock, Neal & Company, some. Some from Chicago, the Liquid Carbonic people out of Chicago. I do not remember the date when I bought from them. I bought from a dealer here some and other people in town.

Mr. LITTLETON.—I want to enter an objection to this form of cross-examination; there is nothing in the direct examination of the witness upon which this can be based and in asking those questions the plaintiff is making the witness the plaintiff's witness, and therefore it is improper cross-examination. It is improper to cross-examine his own witness on question not brought out in direct examination.

(Deposition of J. B. Freed.)

Exception overruled and appeal prayed and granted.

We bought from Spurlock, Neal & Company in 1913 and bought from some other in 1914. We bought from Spurlock, Neal & Company that is all I remember. I do not remember the amount, you have the record, I did not get it. I believe I bought as much as 100 gallons. We do not have a big sale for Coca-Cola at our fountain. I have more sales for the other. I tried Coca-Cola out straight on the fountain without the other and had a great many kicks. For just a day or two I had been without the other on the fountain and had nothing but Coca-Cola and I had a good many kicks. I never have been without Coca-Cola. I think I bought as much as 100 gallons from Spurlock, Neal. Their records will show. I think I bought more in 1914. I think I bought a barrel more in 1914 than 1913. Their records ought to speak the truth, I do not know. I think I bought more than one barrel from them in 1913. Since I have been in business we have had a separate container for this product, Koke, and Coca-Cola. My instructions to all my fountain boys, whenever we get a new man, is to tell him when a man calls for Coca-Cola to give him Coca-Cola, and if he calls for Dope or Koke, to give him other things the profits are better on, to always give them what they call for. That is on account of the profit. I am working for Freed & Haas, not the Coca-Cola Company. I have had the Coca-Cola Company representatives come there and take out a drink and

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push a Coca-Cola [906] back and say it was not their drink. I said whenever they wanted to get a soft drink or a substitute, to call for it. I did not give it to them. I have always gone to the fountain and told the boys to set up two drinks, put one Coca-Cola and one Dope, and push the Coca-Cola to me and the Dope to the gentleman, and I would give him a wink and say "Drink this," then say to him, "Drink that," and for him to tell me which it was, and he would push the Koke back and say the other is the Dope. And I would give him a sample of the syrup out of each barrel so as to show which is Coca-Cola and the other Dope. Johnnie Perdue puts the syrup in the fountain. I guess he has been there six or seven years. I bought that barrel of Coca-Cola syrup in 1914 because I was about run out and wanted some of it. I am about run out again. I have not got more than three or four gallons in the house now, I don't believe. You look like the man that was down there talking to me, the one that pushed the Coca-Cola back. I had some Coca-Cola in the house at that time. I am not positive you are the man. I was under the impression I bought three barrels in 1913. If I have not done away with my bills, I can go back and find out, usually they are burnt up. I do all the buying in the fountain business. I bought all the syrup from Spurlock, Neal and Company in 1913 and 1914. Spurlock, Neal & Company is a reputable house. I believe they are true. I do not believe they would tell me anything else. I could not tell the number of gallons I

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bought at any one time, to be positive. Since I have been in business for the past thirteen years we have kept Coca-Cola and Koke in different containers, not in the same ones all the time. Sometimes maybe a jar gets broken and I have to use my syrup in another jar. They are always separate and never to my knowledge has Coca-Cola, Dope and Koke been served out of the same container. When Dope or Koke is called for and I have Coca-Cola and haven't anything else, I give them Coca-Cola. I do not know exactly how much Koke I buy a year, I have not kept a record of it myself, the bookkeeper keeps a record of everything, I do not know how much [907] we handle. I am not willing to say right now because it is not anybody's business how much stuff I handle a year. I might buy a barrel of extract. I do not know. I buy the extract from the Koke Company. I buy Coca-Cola and Celery-Cola syrups. I have bought Koke syrup. I have gotten this Koke extract or syrup from Birmingham, Alabama and St. Louis, Missouri. Koke syrup, to the best of my knowledge, I have been getting that about seven or eight years, but Celery-Cola I bought in Nashville about thirteen years ago. I do not know whether the Koke label is a diamond or a "V" shape, I do not remember. That was seven or eight years ago. It is a diamond now. I do not think it is the same shape as it was then. I think it was this shape if I am not mistaken. (Witness writes his name on the paper containing the diagram Complainant's Exhibit No. 12.) I know at our place of business

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where these different drinks are supposed to be kept. There are two other plungers on our fountain with Coca-Cola marked on them. I think strawberry is in one of them, sometimes we have to replace the jars which get broken at our fountain, and maybe there is one thing in it this morning and something breaks it and it is changed to something else in it, you cannot keep them labeled. We do not keep dope or koke in Coca-Cola containers. At the present time Coca-Cola is in them, the Coca-Cola has been there for a good long while. I ordered more Coca-Cola jars than I did any others, I expected to use more Coca-Cola jars. I did not do it, and I have taken one up and used it for strawberry, I believe. I ordered others with two jars, strawberry, orange, chocolate, lemon, all materials. I wanted to have it on each side of the fountain so as to have one on each side of the fountain, that is because I expected to use two boys, but we have not done it, we did not have to fix up but one. Our expectation did not come up on Coca-Cola or any of them. I have two of them but I have not used but one. I could not tell what jar we keep Dope and Koke in without I was down there. We might have dope on both sides of our fountain, at times they have it that way. I think [908] we kept it in the third jar from the draught on the right. I think that is where it is now. Sometimes we keep it on the other side and in the same position on the left. Coca-Cola is the fourth from that on the right at the present time, but I have had them set beside one another, one with Coca-Cola and

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another with Dope on it, maybe one is in Orange and the other is in strawberry. Whenever we break a jar we have to move it. There are about four dispensers that work there, not all at once, in the winter-time sometimes not but one, sometimes have two in the winter-time and sometimes three in the summer-time, they change according to the seasons. Not all the containers are being used. The old men know where the containers are but a new man is always shown and learned, he has got to know where the stuff is on the fountain. I keep the Koke and Dope here on this side, and if it is broken, when that happens the man on the fountain knows it himself, he attends to it himself. If he has a jar he will put it back in the same position in another jar. At times when we only had Coca-Cola and they called for Koke or Dope, we give them Coca-Cola. I handle Koke and Dope because I make more money and people want it. We get five cents for a drink over our fountain of Coca-Cola, Dope or Koke. I think Koke and Dope is better and cheaper, I know it is a heavier syrup. The names of the soda-fountain dispensers are Johnnie Perdue, he doesn't stay on the fountain, he only tends to the syrup; Alfred Rankin, Leslie Roberts, and they are about the only ones I have at the present time on the soda-fountain, and all the other over there, they are not soda-fountain men, but they work there every now and then. They have not been with me very long, except Johnnie, the rest are practically new in the business. Off and on I discharge boys. If they

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are not giving satisfaction, I change them. I do not know how many calls a day we have for Coca-Cola, I do not keep count of them, never have. I think there is a good deal more calls for Koke and Dope than for Coca-Cola. I would have to keep a record to find out, I am not so much at the fountain. I have heard people call for Dope, and Koke and Coca-Cola for the last thirteen years I have [909] been in business. Before I went with Freed & Haas I was in the whiskey business. I do not know how much Koke I bought in 1914, I could not tell you and be positive, I will say as much as a barrel, a twenty-five gallon barrel of extract, that will make 260 gallons net of syrup. Not all of it was sold over the fountain, I sold some syrup and dope extract, this last summer, sold it in syrup from over our fountain. A fellow came in that I sold, I don't know where they carried it to, or what they did with it. They call for "Dope Syrup," they have called for a little bottle of Coca-Cola syrup once in a while, every once in a while some one would come in and say "Give me a half pint of Coca-Cola syrup," that they would take it home to make a drink out of it.

I guess twenty thousand—I guess twenty—possibly; between that and twenty-five thousand passed through that transfer station a day. I might have sold more than that, I did not keep a record myself as to just how many gallons I have sold of it.

Redirect Examination.

I am not positive whether Celery-Cola, or Koke syrup I bought away from Nashville, but I know I

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got Celery-Cola in Nashville and bought Koke away from Nashville in extract form. It seems to me the Celery-Cola was about the same thing as Koke, and the trade seemed to like Celery-Cola and Koke and Dope; they all tasted about the same. Coca-Cola representatives called on me within the last year or so. He was the gentleman who favors Mr. Hirsch very much. He wanted to know why I did not handle Coca-Cola. I said, "My friend, I do handle Coca-Cola, always have handled it." He said, "We called for Coca-Cola at your fountain and did not get it." I said, "Who did, that is something funny." He said he had done so. I said, "It is on the fountain and they have instructions to give it to the men that call for it." We were back in the office talking I said shortly, "Do you suppose you could tell the drink if you were to taste it?" He said, "Certainly I could." Well, I talked to him about fifteen minutes in there, [910] I guess, and I said, "Let's go out and have a drink." I went out and called for one of each, I said, "A Coca-Cola and a Dope." I said one of each. He said, "Give me a Coca-Cola." I said, "I called for Coca-Cola for you." And the boy sent me over the Coca-Cola. I said, "Don't offer him the Dope." He took the Dope and drank some of it, and I pushed over the Coca-Cola and he drank that, or part of it, and I said, "Now, which one is Coca-Cola?" He pushed the Coca-Cola back and set the Dope drink out and says, "That is the Coca-Cola." I says, "You are mistaken; this is the Coca-Cola you pushed back."

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I said, "Johnnie, draw another out of the Coca-Cola there and give it to the gentleman." I said, "Does that taste like the one you pushed back?" Well, I don't remember whether he said it did or didn't. He said, "Would you give me a sample of the syrup?" I gave him a sample of the syrup out of the Coca-Cola jar and one out of the Dope jar, and I said to him, "Be sure you keep them separate and see which is which." I said, "See if I gave you Coca-Cola or Dope." There was something else said, when he first came he said to me, "I have got instructions—the Louisville attorneys have got instructions from Atlanta, there is a firm in Nashville by the name of Freed & Haas at the transfer station, down at the transfer station, who are handling substitutes for Coca-Cola, and they sent me over here to see if I could arrange matters. I said, "My friend, we do not handle substitutes, we handle both, Dope and Coca-Cola, and any time you come you will find it on the fountain." He also showed me a letter he had from the Atlanta people, Coca-Cola people, to the Louisville people in regard to this proceeding. He said they would have to take legal proceedings against us if we could not adjust matters in some way. I told them I was working for Freed & Haas and not the Coca-Cola people. He wanted to force me to handle Coca-Cola instead of Dope, that is the way I understood it, that was the way I took it to be. Then I told him that I had a great many more calls for Koke than for Coca-Cola, and that I had kicks on Coca-Cola. That I could prove that, that

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he could stand by my fountain and I [911] would put on nothing but Coca-Cola and try it out, if he would come and stand there, but he did not do it. I bought the Celery-Cola from the Tennessee Bottling Works I know, but the Koke extract I did not buy from them, I may have bought Koke syrup from them. I do not remember about the Koke extract. My understanding is they were making syrup here then seven or eight years ago.

Deposition of J. M. Smith, for Defendants.

J. M. SMITH.

Direct Examination.

Twenty-five years of age; live 807 N. Second Street, Nashville, Tenn. Lived in Nashville about four years; engaged in the cigar, soda and lunch business at 318 Third Ave., North, Nashville, Tennessee. I have been in that business practically all my life; my father was in that business. I have a soda-fountain at my place of business. I do not dispense, I have a soda dispenser there all the time. I can hear the names customers use in asking for the drinks they want. I have been around a soda-fountain ever since I was large enough to work, fifteen or twenty years, fifteen years. I dispense everything that they sell over a soda-fountain, a general line of soda-fountain drinks, and the different kinds of Coca-Cola and other cola syrups. I have dispensed Gerst's Cola, Gao-Ola, Star-Cola, and now a new syrup, Cola drink, put up by the Southern Fountain Supply Company, I do not remember what they call it. Cus-

(Deposition of J. M. Smith.)

tomers calling for these cola drinks invariably ask for Dope. I have a good many customers who come in and ask for a Coca-Cola and some ask for Dope and some ask for Koke, and names like that. I give them when they ask for Dope or Koke, either Star-Cola or Gerst's Cola, or some one of these cola syrups. I have given Coca-Cola under the name of Dope or Koke, and sometimes I have happened not to have one in my fountain and I have the other; sometimes I do not have both and sometimes I will have both at the same time and if I have both syrups in my fountain invariably if a man asks for a Coca-Cola I give him Coca-Cola, but if he asks for a Dope or a Koke I give him one of my other cola drinks, whatever it might happen to be. When customers ask for dope or koke I understand it is any kind of [912] a cola drink, not a definite and specific request for Coca-Cola exclusively. I am now dispensing a cola syrup that is put up by the Southern Fountain Supply Company. I do not remember what they call it, it is put up by Mr. Matthews, I believe, it is a kind of cola syrup and also I am dispensing Coca-Cola. I call this cola syrup Dope. He sells it to me under that name. I understand Koke or Dope is attributable to any kind of cola drink as the way I understand. I have heard these words Koke and Dope applied to soda-fountain beverages ever since I can remember, or about fifteen years, something like that, I have been working in and around soda-fountains for about that length of time. The greater part of the time I have had other

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cola syrups on the fountain as well as Coca-Cola syrups. I never had a customer reject any of the other cola drinks other than Coca-Cola when they have asked for it as Koke or Dope, and I served it to him in response to a request for Koke or Dope on the ground that it was not what he asked for. They serve Star-Cola at the ball park exclusively and have done so the last two or three seasons. They ask for it as Dope and they serve them Star-Cola. The taste of this Star-Cola is a kind of sarsaparilla taste. The taste of Star-Cola and Coca-Cola is different and there is a little difference in the color of the bottle and the way it is blown in the bottle from Coca-Cola bottles. Star-Cola is blown in the bottle. The boys call Star-Cola, then I have heard some men say give me a dope and they would sell them this Star-Cola they were peddling. This Matthew's Cola has a very strong sarsaparilla taste. It is not at all like Coca-Cola, Coca-Cola is sweeter. They ask for that drink as Dope, and I give that to them when they ask for Dope. I never had anyone kick on it or reject it. When customers ask for Koke or Dope I think they are asking for any kind of cola drink.

